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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1969

No. 301

LOREN J. PIKE, as Supervisor of Inspection, Arizona Fruit and Vegetable Standardization Service,
Appellant,

vs.

BRUCE CHURCH, INC.,
a California corporation
Appellee.

On Appeal from the United States District Court for the District of Arizona

APPELLEE'S BRIEF

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On Appeal from the United States District Court for the District of Arizona

APPELLEE'S BRIEF

OPINION BELOW

The opinion of the three-judge District Court below was first set forth in an Opinion and Order dated January 29, 1969. Thereafter, Appellant herein (Defendant below) filed with the Court a Motion for Rehearing and/or

Clarification. On March 10, 1969, the three-judge Court reissued its earlier Opinion and Order in identical terms except that it added, as part of the last two paragraphs of its opinion, the three sentences which are indicated in italics below:

> "A reading of the Act reveals no clear basis nor authority for the issuance of the order by the defendant, Supervisor of Inspection of the Arizona Fruit and Vegetable Standardization Service, which order has been attacked by the plaintiff in this case. *The constitutionality of the Act, then, is not in question. What is in question is the construction placed upon that Act by the Superintendent and the constitutionality of the order issued by him pursuant to his construction.*
>
> "A review of the agreed statement of facts and the Act in question indicates that the order complained of constitutes an unlawful burden upon interstate commerce. See *Foster Fountain Packing Co. v. Haydel,* 278 U.S. 1, 49 S. Ct. 1; *Johnson v. Haydel,* 278 U.S. 16, 49 S. Ct. 6; *Schafer v. Farmers Grain Co.,* 268 U.S. 189, 45 S. Ct. 481; *Lemke v. Farmers Grain Co.,* 258 U.S. 50, 42 S. Ct. 244. *If the application of the Arizona Fruit and Vegetable Standardization Act, as interpreted by the Supervisor of Inspection, could be construed to be a valid interpretation and application of the statute, then the statute so interpreted and applied is unconstitutional.*" (App. 62.)[1]

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[1]This was not a "new opinion" or "new decision" as characterized by Appellant (Brief, pp. 1, 11), nor was the ground of the ruling "unclear" as asserted by Appellant (Brief, p. 11). It was the exact same opinion as first issued, with the addition of the three sentences quoted in italics above pursuant to Appellant's request. (See Appellant's Motion for Rehearing and/or Clarification).

Thereafter, Appellant filed a further Motion for Rehearing, which was denied by the Court on May 1, 1969.

The above-mentioned motions, rulings, and Opinion and Order as filed on January 29, 1969 and March 10, 1969, are contained in the record on appeal. The full text of the Opinion and Order as filed on March 10, 1969 is contained in the Appendix, 58-63. It is from the judgment contained in this Opinion and Order that Appellant has taken this appeal.

STATUTE INVOLVED

In addition to the statutory provisions of the Arizona Fruit and Vegetable Standardization Act, Arizona Revised Statutes, Title 3, Chapter 3, Article 4, which are set forth in Appellant's brief (p. 2), there are others which have relevance to the issues. These will be referred to in the course of this brief. The text of such provisions will be found in the "Comparison of Laws of Arizona and California" which is set forth as a Supplement at the end of this brief. This case concerns the packing in California of cantaloupe crops grown in the State of Arizona, and the laws and procedures affecting such crops and the packing thereof in the States of Arizona and California constitute one of the subjects of the Stipulation of Facts (App. 38-43).

QUESTIONS PRESENTED

The questions presented are:

1. Whether Appellant's interpretation and application of the Arizona Fruit and Vegetable Standardization Act so as to prohibit Appellee from transporting cantaloupe crops grown by it at Parker, Arizona, across the State line into California, a distance of about 31 miles, for processing and packing at Blythe, California, where Appellee maintains packing sheds and other facilities for that purpose, constitutes an unreasonable burden on interstate commerce in violation of Appellee's rights under the commerce clause of the Constitution of the United States (Art. I, Sec. 8).

2. Whether in light of various enactments of the Congress of the United States expressly designed to foster the free movement of agricultural products in interstate commerce, including among them the Agricultural Adjustment Act, the Agricultural Marketing Act of 1946, the Standard Containers Act of 1915, and the Perishable Agricultural Commodities Act of 1930, Appellee's interpretation and application of the Arizona law is also in contravention of the supremacy clause of the Constitution (Art. VI).

STATEMENT OF THE CASE

1. Nature of Proceeding Below.

This action was brought by Appellee Bruce Church, Inc. on May 27, 1968, by Complaint filed in the United States District Court for the District of Arizona to obtain a declaratory judgment and to enjoin Appellant from enforcing his order which prohibited Appellee from trans-

porting its cantaloupe crops grown at Parker Arizona, across the State line into California for processing and packing there (App. 1-16). Processing and packing is accomplished at Blythe, California, in the same manner as when done in Arizona and using the same containers. The order threatened Appellee with loss of its cantaloupe crops that year, inasmuch as Appellee is without processing or packing facilities at Parker. A temporary restraining order was granted by United States District Judge Walter E. Craig on May 27, 1968 (App. 17-19).

Inasmuch as the Complaint raised questions of the constitutionality of a state statute, a three-judge Court was convened pursuant to Title 28 U.S.C. §§ 2281, 2284, the Court consisting of the Honorable Charles M. Merrill, Judge, United States Court of Appeals for the Ninth Circuit, and the Honorable Walter E. Craig and the Honorable Carl A. Muecke, Judges, United States District Court for the District of Arizona. A preliminary injunction was issued unanimously by the three-judge Court on June 7, 1968 (App. 54-57).

The matter came on for hearing on the permanent injunction on November 15, 1968, and such injunction was issued as above indicated by a unanimous Court. The case was submitted to the Court on a Stipulation of Facts dated November 4, 1968 (App. 26-53). Included in the Stipulation were depositions, taken prior to the hearing on the preliminary injunction, of David Gipe, General Manager of the Arizona operations of Appellee, and of Appellant L. J. Pike. The transcripts of their depositions taken on June 5, and 6, 1968 and the Exhibits offered in connection therewith, were made part of the records on

the preliminary injunction and the permanent injunction and are part of the record on appeal. Also included in the Stipulation of Facts is the Transcript of the hearing on the preliminary injunction at which there was presented oral testimony of Mr. Gipe and of Mr. Thomas H. McNamara, President of Appellee, as well as documentary evidence. This transcript as well as the documentary matter are part of the record on this appeal. Likewise included as part of the record on appeal is the transcript of the proceedings on the permanent injunction.

Although the crop immediately affected was the 1968 crop, the case did not become moot with the harvest of that crop. The issues are present and continuing ones inasmuch as Appellee's overall program and crop plans call for continued production of cantaloupe crops to be grown in the Parker district in the years to come and to be processed and packed across the state line of Arizona, in California, a practice which Appellant will continue to seek to prevent. (Stip. of Facts, App. 48). Planting of the year's crop starts in late February and continues through the middle of March. Harvesting commences early in June and continues to about the middle of July (Depo. L. J. Pike, June 5, 1968, pp. 28, 37). A cantaloupe crop was grown and harvested by Appellee in 1969, and unless the action of the three-judge Court is reversed by this Court, Appellee proposes to continue its program of growing cantaloupe crops in 1970 as well.

It will be noted that in granting the permanent injunction, the Court below did not declare the Arizona Fruit and Vegetable Standardization Act as a whole unconstitutional, nor did it hold the enforcement provisions

of the Act unconstitutional. From the portion of its Opinion and Order quoted above, it is clear that the Court was addressing itself to the facts of this case and held simply that Appellant's interpretation and application of the Act, in the circumstances presented here, constitute an unlawful burden upon interstate commerce and are therefore unconstitutional.

2. The Surrounding Facts and Circumstances.

The pertinent facts are set forth in detail in the Stipulation of Facts, which includes a description of Appellee's operations, the past practice of Appellant in respect of permitting transportation of cantaloupes across the State line into California for processing and packing, the issuance of Appellant's order in question, and its impact upon Appellee. It was stipulated (Stip., App. 47, 48), that there are no administrative remedies available to Appellee; that Appellee has no adequate remedy at law and will be irreparably injured; and that this is a proper case for equitable relief and the relief prayed for, if the acts of Appellant are wrongful or unlawful. The pertinent facts will be summarized below.

Appellee Bruce Church, Inc. is engaged in interstate operations.

Appellee is an independent, family-owned and controlled company which has been engaged for many years in the growing, harvesting, transporting, processing, packing and shipping of various kinds of fruits and vegetables in the States of Arizona and California. Almost all of its products are produced for sale, and are sold and shipped in interstate and foreign commerce (Stip.,

App. 28). Mr. McNamara, the company president, estimated that 99 to 100 per cent of the Company's fruits and vegetables went into interstate commerce (Transcript of Proceedings, June 7, 1968, p. 6, L. 20-21).

Appellee is a corporation of the State of California, with headquarters at Salinas, California. It has extensive farming operations in the Salinas Valley as well as in the San Joaquin Valley, the Imperial Valley, and at Blythe, in California. In the State of Arizona, it has operations at Parker, Yuma, Harquahala Valley, Aquila, and Horne. Of the total of approximately 25,000 to 30,000 acres owned or leased by Appellee for farming, approximately 15,000 acres are in the State of Arizona. (Stip., App. 30)[2]

Appellee's operations are geared to produce a continuing supply of its products.

It is generally recognized that the standing and competitive position of a grower in the produce trade is directly affected by its ability to afford its customers a continuing supply of a given product. (Stip., App. 46). Accordingly, Appellee's operations are organized so as to produce a continuing supply of the agricultural products desired by its customers. This is accomplished by taking advantage of the different growing seasons at the various interstate locations where climatic and soil conditions fit Appellee's overall plans, and by planning and synchronizing its crop production accordingly. In this

[2]Whether Appellant's characterization of Appellee as a "giant multi-million dollar farming corporation" is a proper one, is debatable. That it operates in both states in the manner described is not in issue.

way, Appellee is able to supply cantaloupes, among other commodities, during the entire production season in the growing areas of the West.

The importance of continuity of supply to the success of Appellee's business was stressed by Mr. McNamara and Mr. Gipe in their testimony. Mr. McNamara stated, in answer to questioning by counsel, (Transcript of Proceedings, June 7, 1968, pp. 8-9):

> "Q. You have customers, have you not, whom you must keep supplied with a continuous flow of produce?
>
> A. Yes, sir, this is right. Again this is what we base our company policies on, is to satisfy the needs of these customers and the demands of these customers over a period of years. . . . We develop contacts with many customers and they rely upon you for supplies, and you in turn expect them to stay with you over long, extended periods of time, with not only one product but with two or three products, and these would be again in both states, like lettuce, as an example, and cantaloupes.
>
> Q. And these crops mature for harvest in both states at different times of the year, do they not?
>
> A. Yes. This is right. The whole operation is synchronized to be in the best district for quality and production that you can be in, whether it is in Arizona or in California. Essentially as we call the winter operations would be in Arizona. And all of these basic operations must dovetail together, so that you have continuity again of supply. You try not to overlap and be in excess production for any period of time. We have essentially geared our operations to so many packages per day in each district, so we have to be very careful that we don't, as we move from Arizona to California, or vice

versa, that we do not overlap and have a huge peak of crop production which may be difficult to handle.

On the other side of the coin, we do not want to be out of product for any period of time. Number one, obviously, the people we deal with expect us to have this product every day. Number two, if you are out for any period of time, even a short period of time, you can completely miss the marketing opportunity.

Q. Now, does this also affect your competitive position in the industry?

A. Very definitely. If for any reason we are out for an extended period of time, we are definitely at a competitive disadvantage all the way through. This is a very competitive business, as you well know."

Mr. Gipe testified (Depo., June 6, 1968, p. 48):

"Q. Apart from the monetary loss which you would suffer, would you suffer any injury in relation to your customers?

A. Yes. We advertise to our trade through weekly newsletters, through national conventions, through trade media, publications, magazines, newspapers the fact that we can supply them with a continuous volume of melons throughout the entire shipping season of the first of June through Labor Day through the various districts we operate in, and a certain number of our trade book with us and stay with us for supplies because of this fact that we take care of them through the entire season.

If we have a void in there, it hurts. It's a breach of our ability to perform. It hurts.

Q. Is your competitive position among cantaloupe shippers affected by all of this?

A. Oh, yes. The cantaloupe business is a very competitive industry. If we were not able to harvest

this Parker crop, it would make a substantial difference in the market for that given period of time when this crop will be in its peak shipment, when this acreage will be in its peak shipment."

Further, by conducting its growing operations in this manner, Appellee is able not only to increase its production and achieve greater economy and efficiency, but also to effect a more even supply and thereby diminish to some extent the ups and downs of the produce market. This works to the advantage not only of Appellee, but also to the buyers and to the ultimate consumers, insofar as it tends to reduce extreme price fluctuations. (Stip., App. 29)

Economy and efficiency call for centralized facilities to serve the Parker-Blythe growing district.

Successful growing and shipping operations of an interstate character require extensive packing and processing facilities, as well as facilities for delivery to carriers in interstate transportation. However, certain growing districts in which Appellee operates are in sufficient proximity so as to make it possible and practical to locate packing and processing facilities at a centralized location close to rail, truck and air freight facilities, which will be adequate to handle the crops from the several nearby growing areas. This is true in the case of growing areas which, although in different states, are within a workable distance of one another, as is the case of Parker and Blythe. In such cases it becomes economically feasible to construct expanded facilities with all the equipment necessary to handle crops most efficiently and to insure that the produce reaching the markets will be of

the highest standards and quality. It also makes it possible to train and develop a highly skilled year-round labor force, which can assist Appellee in maintaining its reputation, which Appellant himself has admitted is "one of the finest in the business". (Stip., App. 29, 30, 31).

As stated by Mr. Gipe (Depo., June 6, 1968, p. 31, L. 16 - p. 33, L. 5):

> Q. And, as a matter of fact, and as a matter of economics, such facilities should be centrally provided where they can accommodate the produce of different nearby districts. Is that right?
>
> A. This is correct, so that sufficient volume can be processed through one facility with only one overhead cost and a sufficient volume can be processed through that facility for a good operational cost. and this is very important.
>
> Q. And in the case of various of your crops which are involved in these considerations you described, they are grown in border districts, are they not, that is to say adjacent to the border between California and Arizona?
>
> A. This is correct.
>
> Q. Whereas a practical matter to facilitate your packing processing for interstate shipment, a centralized facility located on one side near the border could serve the produce of both state border areas?
>
> A. This is correct.
>
> • • • •
>
> A. . . . and another reason I would like to bring up that we think this is so vital, so important to our total program is that this type of an operation allows us to have better quality control measures, allows us closer inspection of the product, would allow us to have a continuous work force for more months out

of the year whereby you could develop better talent, better labor which would give us this better quality we are striving for."

Appellee's project and crop program at Parker.

In furtherance of its overall plan of operation, Appellee, in 1964, entered into an Agricultural Lease with the Secretary of the Interior of the United States of America, as Lessor, the Commissioner of Indian Affairs, the Colorado River Indian Agency and the Colorado River Indian Tribes, pursuant to which Appellee undertook to develop approximately 6,400 acres of barren, arid uncultivated lands in the Colorado River Indian Tribes Reservation, at Parker, Arizona, covered with brush and mesquite. The magnitude of this undertaking, which is to extend over a term of twenty-five years, is described in more detail in the Stipulation of Facts, (App. 31-33 and Ex. A, following App. 50), in the Deposition of Mr. Gipe, as well as in the testimony of Mr. Gipe and that of Mr. McNamara, at the hearing on the Preliminary Injunction (Transcript, June 7, 1968, p. 12). In brief, it has involved extensive clearing and leveling of land, the construction of a complex irrigation system, canals, 41 miles of underground pipe, and other improvements, at very substantial cost. By the expenditure of great physical effort and very substantial sums of money (between three and three and one-half million dollars at the time this matter first came before the District Court), Appellee has been able to develop these lands to a point where they have begun to be productive. The work of development is to continue, with even more expenditure of effort and resources, apart from rental pay-

ments over the period of the lease which will be in excess of $1,500,000.00. (Stip., App. 31, 32).

Basic to the successful accomplishment of Appellee's undertaking at Parker is an effective crop program. To this end, Appellee has already brought approximately 6,300 acres of crops under cultivation. These include about 2,200 acres of barley, 1,700 acres of sorghum, 800 acres of cotton, 80 acres of onions, 40 acres of Bermuda seed, and about 1,000 acres of alfalfa.

Also included is a cantaloupe crop. This was done as part of Appellee's overall plan to develop a continuing supply of high quality cantaloupes for its trade. For many years past, Appellee has been growing cantaloupes on its farm lands at Yuma, Arizona, and has also been growing cantaloupes in the San Joaquin Valley, the Huron district, and at Mendota, in California (Stip., App. 33). The Parker district is well suited for the production of a high quality cantaloupe (Stip., App. 33), and its maturity and harvest dates fit in well with Appellee's other cantaloupe production schedules. Appellee entered into the lease of the Indian lands at Parker with the express purpose of making cantaloupes one of its basic crops at Parker, and cantaloupes have indeed constituted a most important part of Appellee's crop program at Parker. The year 1966 saw the start of cantaloupe production at Parker, with a modest 80 acres. In 1967, the acreage had been increased to over 400, with a gross return of $598,728.26 (Stip., App. 33). In 1968, the acreage harvested, packed and shipped by Appellee after the issuance of the Temporary Restraining Order totalled approximately 501 acres, with an estimated crop value of $700,000.00 (Stip., App. 33).

Essential railroad facilities do not exist to serve the Parker ranch and Appellee has had no processing and packing facilities at Parker for handling this highly perishable crop, but it does have such facilities available at Blythe, California, where it has processed and packed the cantaloupes up to this time.

Cantaloupes are a highly perishable crop, and must be harvested, processed and packed for shipment promptly on reaching maturity, or the crop will spoil and become worthless (Stip., App. 33). This calls for suitable and adequate processing and packing shed facilities with necessary rail sidings. However, while such facilities have been available to Appellee at Blythe, just across the state line in California, (it is about 25 miles from Parker to the California line and from there about 5 miles to Blythe), none have existed at the Parker Ranch (Stip., App. 34).

There are no rail facilities to the Parker Ranch. Such facilities are essential to a packing and shipping operation (Depo. David Gipe, June 6, 1968, p. 23, L. 10-18). Other firms which operate in the district do have rail facilities (Depo. L. J. Pike, June 5, 1968, p. 33, L. 14-16). To provide such facilities, it would be necessary for the railroad to bring in some 20 miles of track. Appellee would then have to construct a complete packing facility, a shed building and appurtenances, together with all necessary equipment, which would include packing equipment, conveyors, dumps, sorting tables, distribution belts, packer bins, crate racks, lidding machines, cull conveyors, cull storage bins, and moving equipment, such as trucks, fork lifts, etc. (Depo. L. J. Pike, *supra*, pp. 33-35). It was estimated that the cost of such packing facility, with rail siding at the packing shed, would be approximately $200,-

000. It would require about six months for construction alone, apart from the time required on the part of the railroad for acquisition of land and easements and laying of track, and for engineering work and development of plans and designs (Stip., App. 34; Depo. L. J. Pike, June 5, 1968, p. 35, L. 12-22).[3] Such an expenditure of capital, if made necessary because of the imposition of restrictions such as Appellant seeks to impose here rather than because of sound economic planning, would materially increase Appellee's costs of production and would thereby tend to impair its competitive position in the industry (see Stip., App. 37). Proper planning in relation to Appellee's overall operations in the area calls for a centralized facility, capable of handling a variety of crops.

Since it commenced cantaloupe production at Parker in 1966, Appellee has used the facilities at Blythe, California. There, Appellee is afforded a centralized location, with necessary railroad facilities for the proper handling of its crops grown in the general area, including the Par-

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[3]At page 10 of his brief, and also at page 33, Appellant refers to the estimated $200,000 shed cost as though it was the only factor involved. As will be apparent in our brief, this is but one of the losses which would be sustained by Appellee. The continuing and on-going losses in terms of duplication of facilities, equipment and personnel and in terms of loss of efficiency and economy of operation, would be immense over the years.

Furthermore, Appellant's statements might leave the impression that only the construction of a shed stands in the way of processing and packing of Appellee's cantaloupe crops at Parker. This is not the case at all. It would be necessary, as indicated, for the railroad to put in about 20 miles of track to the Parker Ranch to provide shipping facilities.

Appellant's assessment of the cost of a packing shed in terms of Appellee's "net profits", for one year or otherwise, or in terms of "crop value" is purely speculative and without any significance.

ker district (Stip., App. 37). This has enabled Appellee to carry out a more efficient and economical operation, while sending into the markets of the Nation a high grade product, at a lower cost to the consumer (see Stip., App. 37).

In processing and packing its Arizona cantaloupe crops at Blythe, Appellee has been following a practice permitted by Appellant, and followed by other growers as well, for many years since the Arizona law has been in effect.

As the Stipulation of Fact shows (App. 39-41), for many years past, various growers and shippers, with the knowledge of Appellant and without objection or complaint by him, his agents or employees, have transported cantaloupe crops, as well as other agricultural crops, in bulk across the state line of Arizona into the State of California for processing, packing and further shipment in interstate commerce. This was shown in Appellant's own official departmental reports for prior years. These annual reports (covering the years 1953 to 1967 only, these being the only annual reports available at the time) were identified as Defendant's Exhibits 5 through 18 in the deposition of Appellant L. J. Pike of June 5, 1968 and are part of the record on appeal.

Attached to the Stipulation of Facts as Exhibit "B" (App. 51, 40) is a summary showing produce grown in the Parker district in past years and taken across the state line in bulk to Blythe for processing and packing there. The summary, showing name of grower, crop and number of acres, was prepared by Appellant on the basis of the statistics appearing in his department's official annual reports for the years in question. The summary was iden-

tified as Defendant's Exhibit No. 1 in Appellant's deposition and is also part of the record here. The summary shows only watermelon, honeydew and cantaloupe crops, although lettuce also was a commodity similarly handled.

As for melon crops, the summary shows that in the years covered by Appellant's reports, several different growers and shippers harvested their Parker melon crops and transported them to Blythe for packing and shipment in interstate commerce, among them S. L. Eaton Farms, Martin Produce Co., Independent, Garin Company, Noroian Farms, Nish Noroian Farms, as well as Appellee. The cantaloupe variety was so handled during this period by S. L. Eaton Farms, Independent, Martin Produce Co. and Appellee. The firms named commenced the practice even before Appellee established its growing operations at Parker. Appellant stated in his deposition (June 6, 1968, pp. 4-8) that there may have been others, not shown in his reports, who grew cantaloupes at Parker and packed them at Blythe in prior years, including Suzie Belle Farms and Pacific Farms.

The existence of this practice prior to Appellee's coming to Parker was thus clearly noted, and reported without objection, in the official reports of the Appellant's own department for the years in question (Def. Ex. 5-18). Although not reflected on the summary, the practice commenced much earlier, as indicated in a letter dated September 27, 1968, from the Land Operations Officer, Bureau of Indian Affairs, Parker, Arizona, which is attached to the Stipulation of Facts as Exhibit "C" (App. 52). Over the years, mixed melons, carrots, citrus, onions, barley, milo and alfalfa have been moved in bulk from the

Parker Valley or other Arizona districts into California to Blythe. As pointed out in the letter of the Bureau of Indian Affairs: "It appears that some melon crop grown on the project has been processed in Blythe, California, every year since 1948."

It is clear that over the years the acreage affected ran into the thousands, and that the number of trailers permitted to make the crossing ran into many thousands.

It was in reliance on this long-continued past practice that Appellee undertook to plant and grow its cantaloupe crops at Parker. Just as it had grown such crops at Parker in 1966 and 1967, Appellee, in January of 1968, undertook to plant and grow another cantaloupe crop to mature about June 10, 1968, which it proposed to harvest, place in trailers and transport in bulk to Blythe for processing, packing and shipment in accordance with the practice of prior years (Stip., App. 41).

Appellant's notice of prohibition notwithstanding earlier long-continued and approved practice.

After permitting this practice for years and with full knowledge that Appellee already had its crop in the ground without any processing or packing facilities at Parker capable of handling the crop at harvest time (Stip., App. 41), Appellant, on March 22, 1968, informed Appellee by letter that it would not be permitted to transport its cantaloupe crops across the state line into California for packing and processing at Blythe (Stip., App. 41). Absent necessary facilities at Parker, the order threatened Appellee with loss of its entire crop. Appellant, in his deposition admitted that he knew as early as

the Fall of 1967 that Appellee was going to plant a cantaloupe crop for 1968 (Depo. L. J. Pike, June 5, 1968, p. 38, L. 22-p. 39, L. 12).[4]

Appellant's notice to Appellee was very brief. It stated simply that no fruits or vegetables grown in Arizona "will be allowed to leave the State of Arizona unless they meet all the requirements as set forth in these respective laws", referring to the standardization laws of Arizona. Appellant admitted in his deposition that the notice was for the express purpose of informing Appellee that he would not permit its cantaloupe crops to be taken from Parker to Blythe for processing and packing there as above described (Depo., *supra*, p. 55, L. 21-24). Appellant, notwithstanding the practice which he had permitted for many years as being consistent with a proper interpretation of the standardization laws of Arizona, was now taking a totally different course. His letter cited no particular section of the standardization laws which was claimed to be in question. No reasons were given for the issuance of the order, no statement of grounds or explanation of any sort.

The record shows, however, that the order was directed to Appellee following Appellant's attendance at a meeting of the Board of Directors of the Vegetable Growers Association of Central Arizona.[4a] The Association is one of

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[4]Appellant testified in his deposition (Depo. *supra*, p. 38, L. 22-26): "Yes. I would say that we were probably aware of what was going to be planted last fall before it was ever planted. . . . From our men being over there inspecting and visiting with the shippers every day . . . ."

[4a]This is the Association which Appellant, in footnote 8 on page 38 of his Brief, states has been associated with the Arizona Attorney General's Office, "at the expense of the Arizona Vegetable Growers Association," in prosecuting this action.

several grower and shipper associations in Arizona. The minutes of the meeting do not show it (Stip., App. 49) but a principal subject of discussion at the meeting, according to Appellant's own testimony in deposition, was "the Church Company moving cantaloupes across the line" (Depo. L. J. Pike, June 5, 1968, p. 55, L. 19-20). Appellant had been requested to attend this meeting (Depo. *supra*, p. 45, L. 26), but Appellee was not represented (Depo. *supra*, p. 52, L. 19-21). The record indicates further that following his mailing of the letter to Appellee, Appellant sent a copy to each of the members of the Board of Directors, apparently to inform them of the action he had taken following the meeting. As stated by Appellant: "Well, I sent them because of the fact that I attended a meeting with them when they discussed this situation" (Depo. *supra*, p. 43, L. 19-21). According to Appellant, the letter of notification was sent to certain other growers and shippers who are members of the Association, but it was not sent to all the growers and shippers in the State of Arizona (Dep., *supra*, p. 47, L. 16, p. 48, L. 3). In his deposition, Appellant testified that he had no file copies of the letters he sent except a copy of the letter he sent to Appellee. Asked why he kept a file copy of the letter to Appellee and not the others, he replied, "Well, because at the time, they are the only one in question about it that I knew of" (Depo., *supra*, p. 54, L. 13-16).[5]

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[5]On page 11 of Appellant's Brief, in footnote 5, Appellant quotes the letter. However, it was not addressed to "Various Shippers" at all. It was addressed to "Bruce Church, Inc., P. O. Box 599, Salinas, California". (See Def. Ex. 4 to Depo. L. J. Pike, June 5, 1968).

That the action was directed at Appellee, and Appellee alone, can hardly be questioned.[6]

The processing and packing of the Arizona cantaloupes at Blythe has been carried out under inspection procedures and standards very similar to those of Arizona, and the packing has been done in the very same containers as are approved by Appellant and used in Arizona.

The State of California, like Arizona, has had a standardization law for many years, and, indeed, the Arizona law was patterned after the California law. The California law, as does the Arizona law, applies to cantaloupe crops. The law includes provisions (California Agricultural Code, Sections 45633, 45663 and 45664) which relate to the packing of cantaloupes in standard containers of the same sizes and descriptions as those prescribed in

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[6]On page 10 of his Brief, Appellant makes statements, unsupported by record evidence, implying that Appellant's action was related to a bill in the Arizona legislature which failed of passage. There is no evidence in the record whatever as to what the terms or provisions of any such bill were, who sponsored its introduction, what its legislative history was, or what its effect, if any, would have been on the matters involved in this case. Neither the bill nor any of the matters above mentioned were in evidence in the Court below and have no part in the proceedings before this Court. Nor is this a proper subject of judicial notice. The only reference in the Stipulation of Facts to any bill in the Arizona Legislature is to the effect that the minutes of the meeting of the Arizona Vegetable Growers Association attended by Appellant show the following:

> "Those minutes state that current legislation before the Arizona Legislature was discussed at the meeting. Two bills were discussed. The first concerned the use of DDT and the second the bulk movement out of the State of vegetables and melons. The minutes state that the DDT Bill was referred to a Committee of the Association for further study, and that as to the latter bill, no formal action was taken by the Board." (Stip., App. 49).

There is no evidence in the record whatever that any "bill" was "defeated." Indeed, in his deposition, Appellant referred to a bill which "was passed." (Depo. L. J. Pike, June 6, 1968, p. 8, L. 26).

Arizona. These standard containers are of uniform dimensions and specifications adopted by the authorities of both states as part of a plan to achieve uniformity among growers and shippers in the Western States generally. They are so used by growers, many of whom carry out the same growing, packing and shipping operations in the several states, such as Arizona and California, as does Appellee. These growers supply the same customers with the same agricultural products, packed in the same uniform containers, from both the States of Arizona and California. The equipment used by them in their processing and packing operations in both States is the same, geared to handling the same uniform containers (Stip., App. 42).

There exists generally a close liaison between the produce industries of California and Arizona. Some growers and shippers are Arizona residents operating in both Arizona and California, and vice versa. For many years, growers in the Bard Valley of California, including growers of cantaloupes, Appellee among them, have been transporting their products across the state line of California into Yuma, on the Arizona side of the Colorado River, for processing, packing and further shipment to interstate markets, in the same manner as has been done from Parker to Blythe. This has been known to Appellant (Stip., App. 42).

The conditions and standards provided by the standardization laws of Arizona and California are likewise very similar. We have prepared and attached as a Supplement to this brief a tabulation setting forth the text of particular provisions of the laws of both states. It is

readily apparent from a comparison of these provisions that they have a close similarity both in wording and effect. Indeed, the terminology used in a number of instances is so similar as to make it unmistakably clear that one law was used as a model for the other.

As a result of this uniformity of treatment, cantaloupes undergo the same basic inspection procedure in both states. Because of the highly perishable nature of cantaloupes, the process of harvesting them, transporting them to the shed facility, processing, packing and shipping them is one continuous, uninterrupted and rapid process accomplished within a matter of a few hours. Under the existing practice, the cantaloupes are transported from the field to the packing shed in trailers. The Arizona inspectors are stationed in the fields where the harvest is in process, they inspect the cantaloupes daily, and each day they issue "pickle worm" inspection certificates on the crop. This is the same "pickle worm" inspection which is made with respect to all cantaloupes picked in Arizona and shipped to California and similarly certificated. *The inspection certificates given Appellee in this manner are expressly given for delivery by Appellee to the State of California inspector, stationed on the Arizona side of the border, at the time the cantaloupes are taken across the state line into California.* This has been the daily procedure during each of the years Appellee has grown cantaloupes at Parker (Stip., App. 38-39). As described by Mr. Gipe (Transcript of Proceedings, June 7, 1968, p. 27, L. 6-12), "the [Arizona] State inspector comes into the field and looks at the crops in the trailer before they are transported and as they are being transported," and

the certificate for delivery to the California inspector at the crossing is issued.

At the packing shed in Blythe, the procedure and practice of sorting, inspecting, packing and processing by Appellee has been carried out as to grade, quality and pack in the same manner and with the same high standards as its cantaloupe production handled in Arizona, at Yuma. The cantaloupes have undergone there the same basic inspection procedure as in Yuma, including a rigid inspection by Appellee's own personnel. They have been carefully sorted, processed and packed in standard containers, approved in Arizona as well as California, and sent on to interstate markets.

The cantaloupes are also subject to *federal inspection.* In the case of shipments going to Canada or the international trade, the federal inspection is required. In other instances, a federal inspection is made on the packed fruit when called for by the shipper (Testimony of David Gipe, Transcript of Proceedings, June 7, 1968, p. 26, L. 3-10).

As for the containers, the standard containers used in Appellee's operations are the same in whatever district or state, or locations, it operates. There are three sizes of cartons, each being of fixed dimensions, each being assigned a tariff number which is the same in both California and Arizona, and each being officially approved for use by both states. The crate most commonly used is in evidence as Plaintiff's Exhibit No. 1 in the deposition of L. J. Pike, June 5, 1968, p. 59 (Stip., App. 38-39). This crate, known as the "jumbo" crate is used by Appellee about 95% of the time (Depo. David Gipe, June

6, 1968, p. 44). Each of the various containers used for cantaloupes is identified by the same tariff number in both states (Depo. David Gipe, *supra,* p. 44), *the tariff numbers being assigned under the authority of the Interstate Commerce Commission of the United States.*

Appellant, whose experience as a member of the Standardization Service extends over more than 30 years, testified, in his deposition, that the standardization laws of Arizona have been in effect over 35 years, and the standardization requirements of Arizona parallel those of California "pretty close" (Depo. L. J. Pike, June 5, 1968, p. 5-6, p. 62, L. 8-14). He testified further concerning the "very close" liaison relationship which exists between the produce industries of both states, (Depo. *supra,* p. 62, L. 15 - p. 63, L. 2). He himself, prior to entering the Standardization Service, had worked, among other growers, for a produce firm which operated in the Salinas Valley and the Imperial Valley of California as well as in Arizona, very much as Appellee does, and he ran its packing sheds in all three locations. (Depo. *supra,* p. 6-9). All the produce firms he worked for were interstate shippers. (Depo. *supra,* p. 10, L. 13-19).

He testified further that uniformity is a matter of great importance, both as to containers used as well as methods of production, harvesting and packing, many of the crops grown in both states being the same (Depo. *supra,* p. 63, L. 14-20). He confirmed the fact that the growers and shippers who operate in both states plan their overall crop programs in relation to the growing and harvesting seasons in each of the states, so as to coordinate their production and develop a continuous sup-

ply of a given commodity, so far as possible (Depo. *supra*, p. 63, L. 21 - p. 64, L. 3). These growers and shippers, he conceded, have customers all over the nation whom they must keep supplied, and continuity of supply is a very important factor in retaining a good customership (Depo. *supra*, p. 64, L. 4-12). He testified further that the produce industry is a highly competitive industry and that continuity of supply is important in order to enable a grower-shipper to maintain his competitive position among growers and shippers of the same commodity (Depo. *supra*, p. 64, L. 13-20).

Concerning the inspections carried out by inspectors of the State of California, Mr. Gipe testified at the hearing on the preliminary injunction that such inspection is as stringent as the inspection carried out in Arizona, if not more stringent.

The following testimony was given by him at pages 24 through 25 of the hearing transcript:

By Mr. Abramson:

"Q. Mr. Gipe, from your experience in having participated in cantaloupe harvesting, processing, and packing operations in both the States of California and Arizona, what aspects of this operation are subject to inspection by the inspectors of both states?

A. The inspectors in both states inspect the commodity of cantaloupes for physical blemishes or physical deformities of the individual melon, such items as sunburn, sun scald, growth cracks, excessive green, overripes, individual melons that are not up to standard.

Q. From your experience, would you say that the inspection carried out by the California inspectors is

as stringent as that carried out by the Arizona inspectors?

A. Yes. From a practical application there is very little difference between the degree of inspection between the inspectors of the two states, and inspection of the California inspector is as stringent if not more so than the Arizona inspector's.

Q. There is a very close relationship, is there not, between the produce industry in Arizona and that of California?

A. A very close relationship in our cantaloupe operation. Our staff of workers in the cantaloupe shed, our graders, our sorters and packers work on both sides of the river, as it were, work all of our deals with practically no knowledge that there is a different standard or different requirements from deal to deal or shed to shed.

Q. The containers which are used for packing the melons are the same in both states, are they not?

A. This is correct. And the numerical count of cantaloupes within that container are the same."

The cantaloupes are sold in carload or truckload lots to wholesale buyers, receivers or distributors, or to chain stores, who are located in various parts of the country and who generally have representatives at the site inspecting and selecting the produce they are buying.

The cantaloupes here in question are not sold by Appellee, or other interstate growers and shippers, directly to the housewife or consumer, nor are they sold to retail stores. They are sold rather in carload or truckload lots to wholesale buyers, jobbers, receivers or distributors in the terminal markets of the nation, or to chain stores. These organizations generally make their purchases

through agents, produce brokers or buying representatives on the ground, referred to as "ground buyers" or "ground brokers", who will personally inspect the crop and make their selection of produce. Some organizations will purchase directly by phone ("the wire trade") (App. 41-42). However, in all instances, those who do the buying know what and from whom they are buying, that is to say who the grower is, where the cantaloupes were grown and the type, grade and quality. All of these features the buyers will specify, and these are the factors which are reflected in the price agreed upon at the time of purchase. The crate used by Appellee has imprinted thereon "Packed in season in Arizona and California, Main Office, Salinas, California" (Depo. David Gipe, June 6, 1968, p. 60, L. 22-24). But as Mr. Gipe testified, when questioned by Appellant's counsel concerning the reputation of one growing district over another: "It doesn't make any difference what kind of reputation your district has if you don't have a good product that given year. *These buyers inspect the product.*" (Italics supplied) (Depo. David Gipe, *supra,* p. 29, L. 23-26).

The buying group with which the grower-shipper deals is, therefore, a relatively limited, but knowledgeable, group. When the container reaches the store level, the cantaloupes are removed from the container, and, so far as the housewife is concerned, she does not see the container at all. She does not identify the cantaloupe as to source at all and does not buy on that basis. (See generally Transcript of Proceedings, June 7, 1968, p. 6, L. 2-7; Transcript of Proceedings November 15, 1968, pp. 83-86.)

Appellee's processing and packing of its 1968 and 1969 crops following the District Court's orders were carried out in conformity with the same procedures, standards and practices as before.

After the issuance of the District Court's restraining order and injunctions, Appellee's harvesting, processing, packing and shipping of its Parker cantaloupe crops were carried out in the same manner as in prior years, without problems of any kind. This involved inspection of the crops by Appellant's representatives in the field and the issuance by them of "pickle-worm" inspection certificates to be delivered to inspectors of the state of California at the border (Stip. App. 38-39). At the packing shed in Blythe, the cantaloupes were subject to inspection by inspectors of the State of California as to their compliance with governmental quality standards and standardized pack (Stip., App. 36). This was in addition to the inspection performed by Appellee's own personnel, as well as federal inspection where appropriate. The cantaloupes were then packed in the same standard containers as are approved for use in both Arizona and California, and were then sent on to markets throughout the Nation and in foreign commerce (Stip. App. 38, 33).

Appellee will suffer irreparable injury in a variety of ways if Appellant is permitted to carry out his threats.

If Appellant were to succeed in preventing Appellee from engaging in cantaloupe production at Parker, the loss and injury accruing to Appellee would be reflected in a variety of ways. Appellee's 1968 crop, having an estimated value of approximately $700,000.00, would have been lost, of course (Stip. App. 45), and Appellee would have been unable to produce a crop for 1969 or future

years. In connection with the 1968 crop, Appellee had to place advance orders and make commitments for packing crates, ice, and other supplies, and much of the value of these would have been lost. Also, Appellee was committed at the time to rental payments which would have resulted in a loss if the crop could not be packed at Blythe (Stip., App. 47).

Of a particularly serious nature would be the irreparable damage and injury sustained by Appellee in its relations with its customers, who depend on continuing supplies of produce. This would directly and immediately hurt Appellee's competitive position in the produce industry and in the cantaloupe trade in particular (Stip., App. 33-34).

If Appellant's threatened action were to become effective, this would also cause serious interference with Appellee's contractual relations with the United States Secretary of the Interior, the Commissioner of Indian Affiairs, the Colorado River Agency, and the Colorado River Indian Tribes, as lessors of the Parker lands. Such conduct would seriously interfere with and materially impair the successful development of these Indian lands and would tend to discourage and frustrate private investment for the development of these waste lands into productive farm lands. It is stipulated that such would be the testimony of Appellee's officers if called to testify (Stip., App. 45-46), without any contradictory testimony. The lease agreements were entered into with the obvious intent that Appellee would be allowed to apply its broad experience and resources to the job of developing these hitherto useless lands for the ultimate benefit of both the

company and the Indian Tribes. After the termination of the leases, the lands will revert to the Indian Tribes. They will in the meantime have been trained by Appellee in the most modern and approved agricultural practices, so that the Tribes may continue to farm the lands for their own exclusive benefit.

Significantly, Appellant's action would result also in substantially diminished cantaloupe crops in interstate markets, with consequent higher prices to the consumer. Defendant's Exhibit No. 2 in Mr. Pike's deposition of June 5, 1968 is a document showing the melon acreage grown in 1968 by various growers in the Western districts of Arizona which would mature and be harvested at or about the same time as the Parker crop. Defendant's Exhibit No. 3 shows the cantaloupe acreage in Central Arizona which is under harvest at or about the same time. It is readily apparent that Appellee's acreage at Parker constitutes a very substantial part of the crop being harvested at this time of the year. In the Parker-Poston district, Appellee's crop constituted in 1968 about one-third of the area's crop. It is obvious that elimination of Appellee's product from the market would have a direct, immediate and substantial effect on the price of cantaloupes at that time of year. As Mr. Gipe testified (Depo. June 6, 1968, p. 48, L. 18-p. 49, L. 19):

> "A. Oh, yes. The cantaloupe business is a very competitive industry. If we were not able to harvest this Parker crop, it would make a substantial difference in the market for that given period of time when this crop will be in its peak shipment, when this acreage will be in its peak shipment.
>
> Q. Now, would your competition derive any benefit if your crop was lost?

A. Absolutely, because there would be a supply being offered for sale, and the market is determined in our business on the supply and demand basis, and if some of the supply is removed, the demand increases and the market goes up.

Q. According to the figures brought by Mr. Pike, Defendant's No. 2, your acreage in the Parker-Poston area would appear to be approximately one-third of the acreage, and would this have a substantial effect in the respect you have just described?

A. Yes, it would. It's impossible to put a monetary figure on it because it depends on how many melons are coming out of the other districts at that particular time, but it would have a very substantial effect on it.

Q. Would the producers in the Salt River Valley during this harvest period benefit from the loss of your production?

A. Absolutely."

Concerning Appellee's losses, had it not been able to pack its cantaloupe crop in 1968, Appellant Pike testified in his deposition that neither he nor the State of Arizona would have made good any such loss (Depo. June 5, 1968, p. 57, L. 6-16).

On the other hand, when asked by Appellee (Depo. June 5, 1968, p. 59, L. 6-13), "if, assuming . . . that the Church company would pack its cantaloupes at Blythe in the same container and under the same inspection standard as would apply in Arizona, what damage or detriment would you suffer by this so far as your standards for packing, your criteria concerning deceptive packs and so forth are concerned?", Mr. Pike replied, "I wouldn't as long as it's under a court order" (Depo. June 5, 1968,

p. 59, L. 19-20). He would consider that the standards of Arizona have then been met (Depo. June 6, 1968, p. 11, L. 20-24).

As previously noted, Appellant has stipulated that Appellee would suffer irreparable injury as a result of his order if carried out.

The issue here presented is a present and continuing one and has not been rendered moot by the expiration of the 1968 growing season.

Under its lease agreement, Appellee is inextricably committed to its Parker project. It must go forward with the physical improvement and development of the Ranch. It must continue to develop its crop programs. These call for cantaloupe crops in current and future years. Appellee's plans call for an expansion of its cantaloupe production at Parker as part of its overall interstate operations. Although the lease on the shed facilities at Blythe ended by its terms upon the close of the 1968 season, the lease has been and is subject to renewal, and the facilities continue to be available to Appellee for current and subsequent seasons (Stip., App. 47). However, while the Blythe facility is adequate for crops of the quantities presently planned, it would be necessary to construct a new and larger facility to handle substantially increased crops. Such a facility would be constructed at a location that would be in Appellee's best interest, considered from a business standpoint in the light of Appellee's total farming operations and relevant economic factors. Appellee has not yet decided whether it would be in its economic best interest to locate a new facility at Parker, or at Blythe, or elsewhere. However, the facility, when

built, would be a centralized facility, close to rail and air freight facilties, and capable of handling cantaloupes and other crops grown by Appellee in the surrounding area (Stip., App. 37-38).

These plans would be frustrated if Appellant were to carry out his continuing threat to prevent Appellee from taking its crop across the state line. The injury to Appellee's operations which was averted by the District Court's orders would take effect in the future if the effectiveness of those orders is not continued. Both parties have stipulated that the issue here involved is a continuing one and should be resolved by the Court at this time (Stip., App. 48).

SUMMARY OF ARGUMENT

The unanimous judgment of the three-judge District Court below, enjoining Appellant from enforcing his order which would prohibit Appellee from transporting cantaloupe crops grown by it at Parker, Arizona, across the state line for processing and packing at Blythe, California, where Appellee maintains packing sheds and other facilities for that purpose, is fully supported by the facts and the law of the case.

There is ample support for the Court's finding that there is no clear basis or authority in the Arizona Fruit and Vegetable Standardization Act for the issuance of such an order, and that any interpretation and application of the law as embodied in Appellant's order is unconstitutional as constituting an unlawful burden upon interstate commerce.

As a company which has been engaged for many years in the growing, harvesting, transporting, processing, packing and shipping of various kinds of fruits and vegetables in the states of Arizona and California, Appellee has clearly been engaged in interstate commerce. Almost all of its products are produced for sale and are sold and shipped in foreign and interstate commerce. This is true not only in respect of Appellee's general operations but also in respect of its cantaloupe crops grown at Parker, Arizona. At Parker, Appellee has undertaken, under a long term Agricultural Lease with the Secretary of the Interior of the United States, as Lessor, the Commissioner of Indian Affairs, the Colorado River Indian Agency, and the Colorado River Indian Tribes, the development of approximately 6400 acres of barren, arid, uncultivated lands in the Colorado River Indian Tribes Reservation. With extensive effort and considerable investment of capital, Appellee has brought these lands to the point of production. This production has been an integral part of Appellee's overall operations, which are geared to produce a continuing supply of agricultural products for its trade.

Among the crops grown at Parker is a cantaloupe crop. The growing season there fits in very well with Appellee's overall program for a continuous supply of this product. However, Appellee does not have at Parker the packing and processing facilities needed to handle this crop. It does have such facilities at Blythe, which is located about 31 miles from Parker, 5 miles across the Arizona-California border. To make such facilities available at Parker would require, apart from necessary pack-

ing sheds, equipment, rail siding, and other facilities, about 20 miles of railroad track to be installed by the railroad company. None of these facilities presently exist at Parker, and when and if such facilities will be available there, is not now known. The facilities used by Appellee at Blythe afford the company a centralized facility for the processing and packing of its various crops grown in the general Parker-Blythe growing district, an arrangement which permits better handling of these highly perishable commodities, with greater economy and efficiency of operations. This has a direct bearing upon Appellee's competitive position in the industry. Appellee's cantaloupe production at Parker contributes to the supply of this commodity and is reflected in a more favorable price to the consumer.

So far as cantaloupes are concerned, because of their highly perishable nature, they must be sent on their way to the shed for processing, packing and shipping the moment they are harvested. The process from field to railroad car is one continual, uninterrupted and rapid movement, accomplished in a matter of a very few hours. The cantaloupes enter the stream of interstate commerce literally the moment they are taken out of the ground.

In processing and packing its Parker cantaloupes at Blythe, Appellee has been following a practice permitted by Appellant, and followed by other Parker growers as well, for many years since the Arizona law has been in effect. Appellant has regularly reported this practice in his annual departmental reports and has even participated in it by instituting a program for the issuance of a certain type of inspection certificate to be delivered, for

border clearance, to the California Inspector stationed on the Arizona side of the border. This practice continued without question until Appellant's present order, which was issued by him just prior to the time when harvesting of Appellee's 1968 cantaloupe crop was to begin. The order was directed to Appellee notwithstanding that Appellant had had knowledge of Appellee's plans to grow the crop months before it was planted, and notwithstanding that he knew Appellee had no facilities at Parker to process and pack the crop. Appellee stood to lose the entire crop, whose value was estimated at about $700,000.00.

The processing and packing of the Arizona cantaloupes at Blythe has been carried out under inspection procedures and standards of the State of California which are very similar to those of Arizona, and the packing has been done in the very same standard containers as are approved by Appellant and used in Arizona. The California law, embodied in the California Agricultural Code, is very similar to the Arizona Act. Indeed, the Arizona Act was modelled after the California law. There exists a close liaison between the produce industries of the two States, many growers carrying on operations on both sides of the state border.

The effect of Appellant's order, as Appellant himself has necessarily admitted, would be to require Appellee to do its packing in Arizona. More particularly, it would require Appellee to construct a packing plant and other facilities in Arizona where the product could be packed, before it could be taken out of the state. The

case, therefore, falls clearly within the principle of earlier decisions of this Court, such as *Toomer v. Witsell,* 334 U.S. 385 (1948), *Baldwin v. G.A.F. Seelig, Inc.,* 294 U.S. 511 (1935), *Foster-Fountain Packing Co. v. Haydel,* 278 U.S. 1 (1928), *Johnson v. Haydel,* 278 U.S. 16 (1928), *Schafer v. Farmers' Grain Co.,* 268 U.S. 189 (1925), and *Lemke v. Farmers' Grain Co.,* 258 U.S. 50 (1922). These cases held that a state statute which, by its necessary operation, directly interferes with or burdens interstate commerce is a prohibited regulation and invalid, regardless of the purpose for which it was enacted. The *Toomer v. Witsell, Foster-Fountain Packing Co. v. Haydel* and *Johnson v. Haydel* cases were very similar to the present case on their facts. Each of those cases involved action by a state official acting under authority of a state statute (of South Carolina in *Toomer v. Witsell* and of Louisiana in the other two cases) which prohibited the transportation out of the state of fish obtained in the state, for processing and packing in a neighboring state where the fishermen had their own facilities and equipment for accomplishing this work. In each instance, this Court held that the threatened state action constituted an undue burden upon interstate commerce. It found that the purpose of the action was to serve economic interests of the state rather than interests falling within the police powers of the state and could not be sustained as a reasonable burden on interstate commerce.

The cases mentioned above were in line with various other decisions of this Court which are referred to in the course of our Argument. The Opinion and Order of

the Court below makes reference to a number of these cases.

Appellant's contention that his order does not affect interstate commerce because interstate commerce is not involved here at all is, we submit, without justification in light of the facts and legal precedents we have referred to. The cases upon which Appellant relies, principally *Federal Compress and Warehouse Co. v. McLean*, 291 U.S. 17 (1934) and *Chassaniol v. City of Greenwood, Miss.*, 291 U.S. 584 (1934), are cases which involved a local tax on goods (cotton) which had come to rest and were being stored in a warehouse, and neither these nor any of the other cases relied upon by Appellant involved a situation such as here, in which the state sought to impose a requirement that packing of the commodities be accomplished in the state as a condition to their being taken out of the state.

Appellant's contention that the burden imposed by his order, if any, is not an unreasonable one, is likewise, we submit, insupportable. The obvious effect of Appellant's order is to cause a direct and immediate *stoppage* of interstate commerce. This applies not only to the *movement* of the goods in interstate commerce but also to the *production* of goods for interstate commerce for, obviously, if Appellee is not able to take its produce out of the State of Arizona as a result of Appellant's order, it will have to cease production. Additionally, as already indicated, Appellant's order would have the effect of requiring the construction in the State of Arizona of packing sheds and other facilities. Apart from the additional cost of construction of packing sheds and facilities, rail-

road lines and related appurtenances, there would be continuing and on-going losses in terms of duplication of facilities, equipment and personnel, with resultant loss of efficiency and economy of operations, damaging the grower's position in the trade. Furthermore, it would hamper and impede the successful development of the Indian lands for the benefit of the Indian Tribes as well as the grower.

The record clearly shows that Appellant's order is designed fundamentally to serve the local economic interests of the State of Arizona, rather than the public health and safety, and the burden imposed by such order cannot be sustained as an exercise of the police power of the state, as claimed. Any interest which the State of Arizona may have in the quality of Appellee's crops is adequately protected by the necessity of Appellee's having to conform to the equally as stringent, if not more stringent, requirements of the law of California. In many instances, there is a federal inspection as well. The State of Arizona may, if it desires, carry out any inspections of its own. The law of Arizona gives the Supervisor ample scope for carrying out inspections in the fields, in the trailers or in any of a variety of places he may choose, and at any stage. Indeed, Appellant is already carrying out an inspection in the field.

The unreasonableness of Appellant's order is emphasized by his long continued practice of permitting packing across the line in California, a practice followed by a number of growers including Appellee. This long continued administrative practice, we submit, reflects the correct interpretation of the Arizona law.

For the foregoing and other reasons set forth in this brief, the finding of the Court below that Appellant's threatened action was violative of the interstate commerce clause is fully justified.

Additionally, Appellant's threatened action would be violative of the supremacy clause of the Constitution, in that such action would be contrary to, and would tend to defeat, the objectives of the Congress of the United States in a series of federal enactments designed to remove impediments to the free flow of agricultural commodities in interstate commerce, and to improve the efficiency of facilities, methods and processing of agricultural commodities shipped to interstate markets as well as other phases of interstate traffic in agricultural commodities. Among such enactments are the Agricultural Adjustment Act, the Agricultural Marketing Act of 1946, the Standard Containers Act of 1915, and the Perishable Agricultural Commodities Act of 1930. These Acts of the Congress are of long standing and have been implemented by an extensive body of rules and regulations promulgated by the Secretary of Agriculture.

The supremacy clause was one of the grounds on which Appellee relied in the Court below. The Court did not find it necessary to review this issue, having found Appellant's order violative of the commerce clause. However, we consider the issue of such substance as to merit the Court's consideration on this Appeal.

We submit that Appellant's threatened action is violative of both clauses of the Constitution and the judgment of the Court below permanently restraining Appellant from carrying out his order, should be sustained.

It is not our contention that the Arizona law as such is unconstitutional, and the Court below has not so held. We do not challenge the right of the State of Arizona to adopt a standardization law for fruits and vegetables or its right to enforce such a law. The law of Arizona, its provisions, standards, and requirements, are entitled to full enforcement by the State of Arizona *as to all packing operations which take place in the state.* Appellee has for many years operated a packing shed at Yuma, Arizona, where it has packed its Yuma cantaloupes, among other commodities, and, in connection with such operations, Appellee has at all times been unquestionably subject to the standards and inspection procedures set up by the Arizona law.

Appellee's contention is, however, that *the State of Arizona may not require that Appellee perform its packing in that state and not in the State of California.* In interpreting and applying the Arizona law to permit this, Appellee, we submit, is going beyond constitutional limitations. We submit it is not the prerogative of the State of Arizona to tell a grower where he should do his packing, or where he should establish his packing facilities. We submit it is neither the prerogative nor the function of the State of Arizona to enter into a determination, or a weighing, of the economic factors indicating where it is to Appellee's best advantage to build a centralized packing facility. We submit these are company matters.

Indeed, Appellant himself has admitted in his testimony that the interests of the State of Arizona would not suffer if Appellant is permitted to do what he has been doing all along pursuant to Court sanction.

ARGUMENT

I

APPELLEE, AS A GROWER AND SHIPPER OF AGRICULTURAL PRODUCTS IN THE STATES OF CALIFORNIA AND ARIZONA, IS ENGAGED IN INTERSTATE COMMERCE NOT ONLY IN RESPECT OF ITS GENERAL OPERATIONS, BUT ALSO IN RESPECT OF ITS CANTALOUPE CROPS GROWN AT PARKER, ARIZONA, AND THE OPERATIONS SOUGHT TO BE PROHIBITED BY APPELLANT ARE PART OF INTERSTATE COMMERCE.

The facts pertaining to Appellee's operations demonstrate beyond any question that Appellee is engaged in interstate commerce. This applies to Appellee in respect of its overall activities, with farming and packing operations in the States of Arizona and California and with almost all its products being sold in interstate and foreign commerce (Stip., App. 28). It is also true in respect of the cantaloupe crops grown by Appellee at Parker, which are also shipped to markets throughout the Nation (Stip., App. 38).

The cantaloupes at Parker enter the stream of interstate commerce as soon as they are harvested. As the cantaloupes are picked in the fields, they are placed in large trailers which are used to transport them to the processing and packing facility at Blythe. While in Arizona they undergo a "pickle worm inspection" by officials of the State of Arizona. These officials then issue a certificate which clears the crop for interstate transport across the state line into California. The certificate itself is delivered to the California inspector at the border. When the cantaloupes reach the packing facility at Blythe, they are inspected, sorted, processed and packed in standard containers under supervision and control by Appellee as well

as under inspection procedures carried out by inspectors of the State of California in the manner heretofore described. The cantaloupes are then loaded on refrigerated railroad cars or trucks, and go on their way to markets throughout the United States and in foreign commerce.

The process of harvesting, putting in trailers, transporting to Blythe, processing, packing and loading onto railroad cars or trucks is one continuous, uninterrupted process, as indeed it must necessarily be because of the perishable nature of the product. Movement of the cantaloupes in interstate commerce starts immediately when they are taken out of the ground and placed in trailers for transport to Blythe.

The Supreme Court of the United States has declared that interstate commerce begins at "that time *when goods begin their interstate journey* by delivery to a carrier or otherwise, thus passing beyond state authority into the domain of federal control." *Lemke v. Farmers Grain Co.*, 285 U.S. 50, at 55 (1922) (italics supplied). In the *Lemke* case, harvested grain which was being placed in a grain elevator with the intent of shipping it out of state was held to be in the stream of interstate commerce.

The above principle has been applied where a product in its natural condition was being taken within the state to a receiving depot for transshipment out of state for processing there. The raw product was held to be in the stream of interstate commerce. Thus, in the case of *H. P. Hood & Sons v. DuMond*, 336 U.S. 525 (1949), it was held that raw milk which was being delivered by farmers to receiving depots in New York where it would be weighed, tested and if necessary cooled before being shipped to

Boston for processing and sale, was in the stream of interstate commerce. Likewise, in the case of *Toomer v. Witsell*, 334 U.S. 385 (1948), shrimp taken out of the waters of the State of South Carolina and being taken by the fishermen to the State of Georgia for processing and packing in their facilities there, were found to have entered the course of interstate commerce. To the same effect are *Foster-Fountain Packing Company, Inc. v. Haydel*, 278 U.S. 1 (1928); *Johnson v. Haydel*, 278 U.S. 16 (1928).

These cases have direct application to the facts of this case where the cantaloupes, immediately upon harvest are being transported for processing, packing and shipment onward to markets across the country.

The determinative factor is that the product is in course of going into interstate markets. As stated by the Court in the *Lemke* case (258 U.S., *supra*, at p. 55):

> "It is true, as appellants contend, that after the wheat was delivered at complainants elevator, or loaded on the cars for shipment, it might have been diverted to a local market or sent to a local mill. But such was not the course of business. The testimony shows that practically all the wheat purchased by the complainant was for shipment to and sale in the Minneapolis market. *That was the course of business, and fixed and determined the interstate character of the transaction.*" (italics ours)

It is Appellant's contention that interstate commerce is not involved here at all. Thus, Appellant poses as an issue in this case (his Brief, p. 5):

> "Whether, under this Court's decisions in *Federal Compress and Warehouse Co. v. McLean*, 291 U.S.

17 (1934) and *Chassaniol v. City of Greenwood*, 291 U.S. 584 (1934) the strictures of the commerce clause are even relevant, since the regulation occurs and is terminated prior to the time that the regulated goods move in interstate commerce;"

The assertion that "the regulation occurs and is terminated prior to the time that the regulated goods move in interstate commerce" is without any support whatever in the facts of this case, which show most clearly that

(1) Appellee is an interstate grower and shipper, almost all of whose products are packed, sold and shipped in interstate commerce, including the cantaloupes here in question; and that these products are expressly grown for shipment, intended to be shipped, and are in fact shipped to markets throughout the Nation and in foreign commerce.

(2) Due in large part to the highly perishable nature of the product, the process of harvesting, hauling to shed, processing, packing and shipping of the cantaloupes is one continual, uninterrupted and rapid movement, accomplished in a matter of a very few hours, as indicated above. The product literally never comes to rest. It is not stored or warehoused, as in the cases cited by Appellant. It enters the stream of interstate commerce the very moment that it is severed from the ground.

(3) Appellant in the present case is not seeking to regulate an activity which Appellee is performing in the state. He is seeking to prevent *movement* itself, movement of the cantaloupes from Parker across the state line to Blythe. The cantaloupes are then already on their way in the stream of commerce as part of the continous process above described.

(4) The effect of Appellant's order, if Appellee were not to be prohibited from sending its products forth into the stream of commerce, is to require Appellee to engage in certain affirmative acts in the State of Arizona, including the processing and packing of its products there, doing the processing and packing in a packing shed located in Arizona, and constructing a packing shed in Arizona for such purpose—notwithstanding the existence of facilities used by Appellee for performing all the foregoing at Blythe, under similar standards and procedures, and in the same containers, as are used in Arizona (see II C 2, *infra*).

We respectfully submit the activity involved in this case is clearly part and parcel of the flow of interstate commerce, and to contend that it is not is to engage in a fruitless task of attempting to draw fine lines not in accord with present-day business realities. We submit this position is amply supported by the cases we have already cited and discussed above.

The *Federal Compress* and *Chassaniol* cases cited by Appellant are basically different and wholly distinguishable from the present case. In those cases, the so-called regulatory act in question was the levy of a local tax on goods (cotton) which had come to rest in a warehouse, where they could sit for a long time before entering the stream of commerce. This was the subject of great stress by the Court in the *Federal Compress* case, 291 U.S. 17, at p. 21:

> "It is clear that by all accepted tests the cotton, while in appellant's warehouse, has not begun to move in interstate commerce, and hence is not a subject of interstate commerce immune from local taxa-

tion. When it comes to rest there, its intrastate journey, whether by truck or by rail, comes to an end. . . ."

In the present case, the cantaloupes have not come to rest in Arizona, but are on their way to California.

Cotton, unlike cantaloupes, is not a perishable commodity, and it is apparent from a reading of the *Federal Compress* case, *supra,* that the normal course of business in dealing with cotton is for it to be transported to a warehouse, where it comes to rest, is stored, and sometime later is compressed and sent on into the stream of interstate commerce. On the other hand, cantaloupes, as a highly perishable commodity, cannot be allowed to come to rest and be stored at any stage of their journey from the field to market, without seriously endangering their quality and marketability. They must immediately be set in motion to their ultimate destination (Stip., App. 33).[7]

In the *Federal Compress* case, the statement is made: "Before shipping orders are given, it has no ascertainable destination without the state. . . ." (291 U.S., *supra,* at p. 21). Conversely, in our case the cantaloupes being transported by Appellee do have an ascertainable destination without the state, which is Appellee's packing facility at Blythe, California. Further, the *Federal Compress* case makes note of the fact that the cotton is "withdrawn from transportation", whereas there is no such withdrawal in the case of Appellee's cantaloupes. They must immediately

[7]Appellant's argument that "whether cantaloupes have a shorter or longer storage period than cotton is therefore immaterial" (Brief, p. 18) has no relevance whatever to the facts of this case. Cantaloupes, as the record shows, have no storage period at all and, because of their inherent characteristics, cannot have any.

be carried from the field to market in the most expeditious manner.

We may point out, as is well known to the Court, that the National Labor Relations Board and other federal regulatory agencies have taken jurisdiction over transportation of goods such as are involved in the present case, on the basis that interstate commerce has come into play. The National Labor Relations Board has taken jurisdiction over employer-employee relations in the area, which is reflected in labor contracts between growers and shippers and teamsters, for example.

The fact is that even the packing operation itself is under similar National Labor Relations Board jurisdiction, and the packing process is indeed a phase of interstate commerce. We respectfully submit the *Federal Compress* and *Chassaniol* cases are of little aid in relation to the facts of this case.

The *Federal Compress* case, as Appellant's quote from that case on page 17 of his Brief indicates, itself distinguished "local taxation" from a case comparable to the present case in which "local regulations of the business of purchasing a commodity within and *shipping it without the state* have been deemed to impede or embarrass interstate commerce in those commodities" (291 U.S. 17, at p. 22) (italics ours); and among the cases cited by the Court is *Lemke v. Farmers' Grain Co.*, 258 U.S. 50, a case which we have brought to the attention of the Court below and on which the Court has relied. Likewise, in the *Chassaniol* case, the Court likened the local tax to an "occupation tax" or a "property tax", (291 U.S. 584, at 587) (see Appellant's quote, p. 17 of his Brief).

In neither the *Federal Compress* nor the *Chassaniol* cases was there involved, as here, state action which would require the performance in the State of Mississippi of packing operations which the packer desired to carry out in a sister state. The distinction between a local regulation affecting an activity which is already taking place in the state and the requirement that an operation take place in the state in order that it might be regulated, was noted by the Court below at the hearing on the permanent injunction. As Judge Merrill remarked, in colloquy with Appellant's counsel (Transcript of Proceedings of November 15, 1968, p. 34, L. 23-p. 35, L. 13):

> ". . . Suppose that a packer in interstate commerce, who ships all of his produce out of the State of Arizona, suppose that that packer has a facility in Arizona and complies or is asked to comply with the Arizona laws which would apply to such facility. Now, it seems to me that perhaps we have one question, under the authorities, as to whether Arizona can properly regulate this local aspect of an interstate operation, including taxing it."
>
> Mr. Lee: "Yes."
>
> Judge Merrill: "And, another question, which would be quite different, as to whether Arizona can insist that that operation take place in Arizona, irrespective of what the shipper wants to do."
>
> Mr. Lee: "I see."
>
> Judge Merrill: "I think that perhaps we have two different questions there. . . ."

And again (Transcript, *supra*, p. 51, L. 2-12):

> "Judge Merrill: Well, I'll tell you what is still troubling me a little bit is the distinction that I have

> already suggested. I think that what you are doing is creating a hypothetical packing shed, saying you can regulate. It is not yet in interstate commerce yet in the sense that we can't regulate this intrastate aspect. But you don't have that kind of situation here. You are insisting that we create one so that you can regulate it. This is what I am wondering about, whether we can go that far.
> Mr. Lee: Yes, I realize that there are some conceptual difficulties with that. . . ."

It was noted by the Court below that the *Federal Compress* and *Chassaniol* cases involved taxation (Transcript, *supra*, p. 50, L. 20), and the question was asked by Judge Merrill, "Would it have been proper for that state to insist that cotton be compressed within the state so that it could tax it?" (Transcript, *supra*, p. 67, L. 6-8).

It is respectfully submitted that the *Federal Compress* and *Chassaniol* cases are not at all comparable to the present case and do not present the same issues.

What has been said of *Federal Compress* and *Chassaniol* is also true of *Parker v. Brown*, 317 U.S. 341 (1943), upon which Appellant relies. That case involved a prorate activity only, affecting without discrimination all area producers and wholly intrastate in nature, as the Court stressed. It did not involve goods in process of moving to market. The goods in *Parker v. Brown*, as in the *Federal Compress* and *Chassaniol* cases, were goods in storage and could have been so for long periods of time. The Prorate Act, it may be noted, moreover, was one expressly sanctioned and collaborated in by the Federal authority as being a conservation measure, consistent

with the federal objectives under the Agricultural Marketing Act and the Agricultural Adjustment Act.[8]

Appellant attempts to distinguish the cases of *Lemke v. Farmers' Grain Co.*, 258 U.S. 50 (1922), and *Shafer v. Farmers' Grain Co.*, 268 U.S. 189 (1925), relied on by us. We respectfully submit that in so doing Appellant serves only to emphasize our point. Appellant must necessarily concede these cases hold that a state cannot regulate the purchase of grain where the grain is intended for prompt shipment outside of the state. Appellant suggests this applies to cases where the goods are to leave the state without processing (Brief, p. 18). Without going into the question whether those decisions are to be so narrowly construed, we need merely point out that no processing of the goods in the present case is taking place in Arizona either. Rather, the goods are in the act of being shipped out of the state for processing.

Appellant asserts (Brief, p. 19) that "the state of Arizona is free to implement the regulation of its fruits and

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[8]As Judge Muecke commented regarding the California action involved in the *Parker v. Brown* case (Transcript of Proceedings, November 15, 1968, p. 59, L. 4-19):

"Judge Muecke: They did it under the provisions of the Agricultural Adjustment Act, through a state law that was enacted pursuant to that act and they did it on a showing of a long history of a disastrous price fall, which even put the raisins below the cost of production, which would have wiped out the whole industry. And they were trying to establish some price stability for the industry and preserve the industry.

Mr. Lee: Everything you say is correct, Judge Muecke.

Judge Muecke: And they took it right at the beginning, so it is quite obvious what they were doing here was pursuant to both Federal and State law and it had a reasonable means for a reasonable end. But I don't quite follow that in terms that it has to be in boxes in order to have good——"

vegetables at the packing stage free from commerce clause strictures." But this Argument, we submit, merely begs the question. As pointed out, we are not dealing here with an attempt to regulate an activity—packing—which is taking place in Arizona, because the packing is not taking place in Arizona. It is rather a question *whether Arizona can require that the packing be done in that State* in order to regulate it.

Appellant states further (Brief, p. 19): "The Appellee's contention in the Motion to Dismiss that the regulation here at issue prevents interstate movement itself, rests upon bootstrap logic. The interstate movement to which the Appellee refers is necessarily that of cantaloupes which do not meet the quality and packing standards of the Act. Such cantaloupes are prevented from moving in interstate commerce. . . ." This, of course, is not the case at all. Appellant's order is an absolute prohibition of the taking out of the state of *all* cantaloupes without regard to quality or condition—even the very best —unless they have been first packed in Arizona, in a packing shed in Arizona, in prescribed containers.

The Court below held that such an order (1) affects interstate commerce (2) casts an unreasonable burden on interstate commerce. We submit this ruling is consistent with the decisions of this Court and is eminently sound.

II

THE PROHIBITION SOUGHT TO BE IMPOSED BY APPELLANT CONSTITUTES AN UNDUE BURDEN AND OBSTRUCTION ON INTERSTATE COMMERCE.

A. Appellee, as a grower and shipper engaged in interstate commerce, has a constitutional right to carry out its operations free from unreasonable restrictions sought to be imposed by Appellant under color of authority of a statute of the State of Arizona.

Article I, Section 8, of the United States Constitution confers upon Congress the power ". . . To regulate commerce with foreign Nations, and among the several states, and with the Indian Tribes . . ."

The power to regulate and control interstate commerce thus vested in the federal authority, was founded on sound practical considerations. As expressed by the Supreme Court of the United States in *H. P. Hood & Sons v. DuMond,* 336 U.S. 526, at 539 (1949):

> "Our system, fostered by the Commerce Clause, is that every farmer and every craftsman shall be encouraged to produce by the certainty that he will have free access to every market in the Nation, that no home embargoes will withhold his export, and no foreign state will by customs, duties or regulations exclude them. Likewise, every consumer may look to the free competition from every producing area in the Nation to protect him from exploitation by any. Such was the vision of the Founders; such has been the doctrine of this Court, which has given it reality."

And as expressed by Justice Cardozo, writing for a unanimous Court in *Baldwin v. G. A. F. Seelig, Inc.,* 294 U.S. 511, at pages 522, 523 (1935):

> "If New York in order to promote the economic welfare of her farmers, may guard them against competi-

> tion with the cheaper prices of Vermont, the door has been opened to rivalries and reprisals that were meant to be averted by subjecting commerce between the states to the power of the nation."
>
> "The Constitution was framed . . . upon the theory that the peoples of the several states must sink or swim together and that in the long run prosperity and salvation are in union and not division."

The basic thrust of the Commerce Clause, therefore, was to protect the individual whose production is destined for interstate markets against restrictive action by the state.

As applied to this case, it is clear that Appellee, as a producer of products which it channels into the stream of commerce between the states, has the constitutional right to conduct its business in a manner which will permit it to take into consideration economic factors, free of unreasonable restraints sought to be imposed by state authority.

In line with these principles, Appellee, we respectfully submit, has the constitutional right to engage in the planting of crops on land owned or controlled by it, secure in the knowledge that when the crops mature, it will be able to harvest these crops and transport them to facilities owned or controlled by it for processing and packing and placing them in railroad cars or other transport devices for carriage to interstate markets, whether the facilities in question are in the state of production or in a neighboring state.

State action which unduly burdens interstate commerce has as little validity when it takes the form of official

interpretation and application of state statute as when it takes the form of express statutory prohibition.

In *Baldwin v. G. A. F. Seelig, Inc.*, 294 U.S. 511 at 552 (1935), the Supreme Court stated:

> "It is the established doctrine of this Court that a state may not, *in any form or under any guise* directly burden prosecution of interstate business." (italics supplied.)

In the present case, the threatened prohibition is equally violative of Appellee's constitutional rights whether it is founded on the express provision of the Arizona Standardization Act itself or upon an interpretation or application of that Act by Appellant.

B. This Court has declared action similar to that of Appellant unconstitutional in cases closely paralleling the facts of the present case, and the decision of the three-judge District Court below was in keeping with these precedents.

Decisions of the Supreme Court have held consistently that a state statute which, by its necessary operation, directly interferes with or burdens interstate commerce is a prohibited regulation and invalid, regardless of the purpose for which it was enacted, and will not be permitted to stand. *Toomer v. Witsell*, 334 U.S. 385 (1948); *Baldwin v. G. A. F. Seelig*, 294 U.S. 511 (1935); *Foster Fountain Packing Co. v. Haydel*, 278 U.S. 1 (1928); *Johnson v. Haydel*, 278 U.S. 16 (1928); *Schafer v. Farmers' Grain Company*, 268 U.S. 189 (1925); *Lemke v. Farmers' Grain Co.*, 258 U.S. 50 (1922).

The decision of the three-judge Court below sought to give effect to these established precedents of this Court. (Opinion and Order, App. 62.) Included among these

cases are some which parallel the facts of the present case very closely.

For example, in *Toomer v. Witsell,* 334 U.S. 385 (1948), the Supreme Court had under review a statute of South Carolina which required that all boats licensed to troll for shrimp in the State's waters were to dock at South Carolina ports and unload, pack and stamp their catch there before shipping or transporting it to any other State. Certain shrimp fishermen wanted to take their catch into the State of Georgia, where they had their own facilities for processing and packing. They brought action against the South Carolina officials charged with enforcement of the statute, seeking an injunction on constitutional grounds based on the Commerce Clause, as in the present case. The matter was heard before a three-judge Federal District Court, which upheld the statute and denied an injunction. The Supreme Court reversed, holding that the statute tended to cause an undue burden on interstate commerce in violation of the Commerce Clause and was therefore invalid and unenforceable.

Mr. Chief Justice Vinson, in his opinion, stated:

> "The record shows that a high proportion of the shrimp caught along the South Carolina coast, both by appellants and others, is shipped in interstate commerce. There was also uncontradicted evidence that appellants' costs would be materially increased by the necessity of having their shrimp unloaded and packed in South Carolina ports rather than at their own docking, warehousing, refrigeration and packing facilities. In addition, an inevitable concomitant of a statute requiring that work be done in South Carolina, even though that be economically disadvantageous to the fishermen, is to divert to South Carolina

employment and business which might otherwise go to Georgia; the necessary tendency of the statute is to impose an artificial rigidity on the economic pattern of the industry" (*Id.* at 404).

The *Toomer v. Witsell* case presented the strongest possible case for State control because of the recognized common law property interest of the State in its fish and game, a factor which is not present in the instant case. Notwithstanding this, the Supreme Court found that the State could not impose conditions on shipments out of the state so as to burden interstate commerce. The Court laid heavy stress on "the importance of having commerce between the forty-eight States unimpeded by local barriers" and upon the principle "that State restrictions inimical to the Commerce Clause should not be approved simply because they facilitate in some measure" enforcement of the State law (*Id.* at 406).

Foster-Fountain Packing Company, Inc. v. Haydel, 278 U.S. 1 (1928), also presented a case whose facts closely parallel those of the present case. There, an official of Louisiana attempted to prohibit the transportation of shrimp out of the State of Louisiana, unless the hulls and heads had first been removed in the State of Louisiana. His action was based on the Louisiana Shrimp Act. The plaintiff, which had its processing facilities in the State of Mississippi wanted to take the shrimp out of the State of Louisiana and have them packed in Mississippi. Although the State of Louisiana had a strong common law property right in its fish and game, the Supreme Court held that the prohibition of transportation of shrimp out of the State unless their hulls and heads had been first removed

in Louisiana was unreasonable and imposed an undue burden upon commerce. The officer charged with enforcement of the Louisiana law argued that the purpose of the Act was conservation, but the Court held that in its practical operation, the law resulted in an impermissible direct burden upon interstate commerce. The Court held that the actual purpose of the Louisiana Shrimp Act was not to retain the shrimp for use of the people of Louisiana, but rather to favor the canning of the meat and the manufacturing of shrimp bran in the State of Louisiana, by withholding raw or unshelled shrimp from processing plants owned or operated by the packers in Biloxi, Mississippi.

The same result was reached in a companion case, *Johnson v. Haydel,* 278 U.S. 16 (1928), in which interstate oyster packers successfully challenged the Louisiana Oyster Act, which was similar to the Shrimp Act.

These cases hold a close analogy to the present case, where the practical effect of Appellant's application of the Arizona Fruit and Vegetable Standardization Act is to require that the packing and processing of Appellee's cantaloupe crops be performed in the State of Arizona, rather than in the neighboring state of California, in which Appellee maintains its own packing and processing establishment, as a centralized facility equipped and organized to serve Appellee's overall crop activities in the border districts of California and Arizona. If Appellee were required to set up duplicate facilities at Parker (even if a rail line were to be brought in by the railroad), this would bring on considerable additional cost to Appellee and would result in an uneconomical, inefficient and unbusinesslike operation.

Further, as in the cases cited, if Appellee were forced to conduct its processing and packing operations in Arizona, Appellant and the State of Arizona would thereby necessarily be diverting to the State of Arizona business, employment and taxes which might otherwise go to California. If such result could be enforced upon Appellee under circumstances such as here, it would necessarily follow that similar effects could be enforced upon interstate producers of other agricultural commodities, and, indeed, upon interstate businesses of every type and kind. If the Appellant were to succeed in doing this, notwithstanding the requirements of the Commerce Clause, it would open the way for every State in the Union to take similar action for its protection. This would then have the effect of imposing an "artificial rigidity" on commerce between the states in direct contravention of the intent of the Framers of the Constitution, who recognized that the free flow of commerce and trade among the several states was essential to the success of our federal form of Government. We respectfully submit the factors which motivated the Framers to adopt this basic policy find even stronger ground today.

Consistent with the decisions of this Court such as the foregoing, the three-judge District Court below found Appellant's order to constitute an unlawful interference with, and burden upon, interstate commerce, and therefore invalid. We submit the Court's decision finds ample support in both the facts and law of this case.

C. The unreasonableness of Appellant's order is demonstrated by a number of factors, some of which were not present in prior cases which this Court considered as involving unreasonable burdens on interstate commerce.

1. The effect of Appellant's order is to cause a direct and immediate stoppage of interstate commerce—movement and production, both.

It is readily apparent that Appellants' threatened action would not only cast a burden upon interestate commerce, but it would directly, immediately, and effectively stop it. His order amounts to an *absolute prohibition* of the interstate transportation which Appellee has carried out in the past. It would arrest movement of the goods at the state border. As Judge Merrill inquired of Appellant at the hearing (Transcript of Proceedings, November 15, 1968, p. 60, L. 11-12):

> "As to the Church operations, where are you imposing your regulations—right at the state line?"

We can conceive of no action which would have a greater impact upon the flow of goods in interstate commerce than the act of stopping it while on its way.

Appellant asserts (Brief, p. 19), that the state's program "is objected to by one of the regulated corporations on the asserted ground that the program has an ancillary impeding effect to one degree or another on the flow of commerce across the state lines." As indicated above, Appellee's objection—which is to the acts and threats of Appellant and not the "program" as such—does not rest merely on "ancillary impeding effect to one degree or another". Appellee's objection rests on the *absolute prohibition* of transportation across the state line which is here involved. This is not a case merely of impediment to interstate commerce as affecting prod-

uce which *ultimately* moves in interstate commerce. Rather it is a case of attempted prohibition and interference with produce which *is* in the course of movement in interstate commerce.

Furthermore, it is apparent that Appellant's threatened action would have the effect of *stopping production itself*—of goods intended for interstate commerce. If Appellee, being without railroad and other facilities required by Appellant's order, cannot transport its cantaloupe crops to Blythe for processing and packing there, it will obviously have to cease production of this commodity. Surely, there can be no more drastic interference with interstate commerce than to foreclose production of commodities which would go into the stream of commerce. Appellant, in his Brief at page 33, states that there are two other shippers in the Parker District, the Garin Company and the Tri-Produce Company, who pack their cantaloupes in Arizona, and he asks why Appellee cannot do likewise. The fact is, however, as the record shows, that the shippers named have railroad lines into their packing sheds. (Depo. L. J. Pike, June 5, 1968, p. 33, L. 14-16.)

2. Appellant's order would have the effect of requiring Appellee to undertake costly projects and adopt uneconomical and inefficient business practices as a condition to shipment of its products out of the state.

In his Jurisdictional Statement filed with this Court (p. 10), Appellant stated:

> "The problem from the Appellee's standpoint is thus strictly an economic one: under the Act, appellee cannot ship its cantaloupes unless they have been inspected; they cannot be inspected by the appellant

> unless they are packed in Arizona; and they cannot be packed except in a packing shed."

Appellant makes a similar statement in his Brief, at pp. 21-22.

Appellant's statement is premised on his argument that inspection of the produce for defects can be accomplished "only" in the packing shed and that an inspection in the field is "impossible" (Brief, p. 22, 23).

There is no support in the record for such premise at all.[9] Nevertheless, Appellant's position, as stated by him

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[9]At page 9 of his Jurisdictional Statement, Appellant makes the statement, not supported by the record, that: "The parties stipulated at the oral argument before the district court that cantaloupes can be inspected for the defects proscribed by the statute only at the packing stage," citing Transcript of Proceedings, November 15, 1968, p. 70-71. Examination of those pages will disclose that this was not the stipulation at all. What appears there is simply that "the inspection best takes place at the stage of sorting, when the cantaloupes are sorted, and at the present time this can most conveniently and efficiently be done in the packing shed." Accordingly, this statement hardly suggests that inspection can take place *only* at the packing stage, but relates solely to convenience and efficiency. This was recognized by the Court below, as reflected in the comment of Judge Craig (Transcript, *supra*, p. 63, L. 10-12): "So then you say, in effect, it must go through a packing shed, because that is where you get a more practical place to look at them . . ."

Appellant makes the further statement that inspection for quality defects at a stage other than the packing stage "would be inordinately disruptive to the shipper's operations and impossible for the inspector to accomplish." The record contains no evidence whatever on this point.

Appellant also states in his Jurisdictional Statement (p. 9) that inspection of cantaloupes to determine compliance with the standardization laws "simply is not carried out in this State or any other State" except at the time cantaloupes are sorted and packed. There is no evidence whatever in the record as to how the inspection of cantaloupes is carried out in other states, except in California: and, of course, as already indicated, there is no basis for the further statement on page 9 that the sorting and packing "must" be accomplished at the packing shed, or,

above, is clear: the effect of the Arizona law, so far as Appellee's operations are concerned, is three-fold:

(1) Appellee's cantaloupes must be packed in the State of Arizona.

(2) They must be packed in a packing shed situated in Arizona.

(3) Appellee must construct such a packing shed in Arizona.

Appellee would necessarily have to comply with all three requirements in order to be permitted to ship its cantaloupe crops in interstate commerce. And this, notwithstanding the fact that Appellee already has adequate centralized facilities at Blythe to serve its general needs in the Parker-Blythe growing district.

That this was the necessary effect of Appellant's position was recognized by the three-judge Court below. Thus, Judge Craig inquired of Appellant's counsel: ". . . aren't you saying that no cantaloupe grown in the State of Arizona can leave the State of Arizona without going through a packing shed?" (Transcript of Proceedings of November 15, 1968, p. 62, L. 1-4). And the implications of Appellant's position in light of this Court's prior decisions referred to above were the subject of the following colloquy between Court and counsel for Appellant

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as stated in his Brief (p. 22), that sorting and packing can be done "only" in a packing shed. Appellant's statement cites deposition testimony of David Gipe, p. 10, L. 8-13, but all Mr. Gipe stated was that under present methods it was not "practical" to do otherwise and that other methods had not yet been tried "on a large commercial scale." Appellant's statement is even inconsistent with his earlier statement (Brief p. 8), citing the same testimony of Mr. Gipe, to the effect that "under present technology, it is not *commercially feasible* to sort and pack cantaloupes except in a packing shed." (Italics ours).

(Transcript of Proceedings of November 15, 1968, p. 36, L. 12 to p. 38, L. 13):

"Judge Merrill: I have a little trouble, I must confess, with the legitimacy of the state interest in that unless it is being packed in Arizona.

Mr. Lee: Well——

Judge Merrill: Now, suppose it is being packed in California, what legitimate state interest has Arizona once the fruit has left the State? It would have a legitimate interest in fruit coming into the state——

Mr. Lee: No question.

Judge Merrill: ——if it is sold to Arizona consumers. But I must confess I have a little difficulty in the legitimacy of the state's interest as to produce which is going to be sold interstate, and whether, if you assert such an interest, you are not categorizing or separating out an area of interstate commerce with which you have this concern, and if you are not really separating out interstate commerce for the purpose of regulating interstate commerce as distinguished from your regulation of intrastate commerce.

Mr. Lee: All right. Let me answer that in two parts. Of course, that is the whole case and in the answer to that particular question you solve this lawsuit. And there are essentially two answers to it, and they are both supported, in my view, Judge Merrill, and I cannot see a meaningful difference, they are both supported by square holdings of the United States Supreme Court.

The first one is that as long as you assert the regulation at a stage which involves some processing prior to shipment in interstate commerce, that is not interstate commerce. That is point number one.

And the second point is—

Judge Merrill: Still subject to the problem that I have of being able to regulate it, if it takes place—

Mr. Lee: Yes, I suppose that's true.

Judge Merrill: —distinguished from the insistence that it should take place.

Mr. Lee: Yes, I suppose that's true, because then you would be in the Toomer v. Witsell, Baldwin v. Seelig category.

Judge Merrill: *I wonder if you have any authorities, such as the shrimp cases, which would recognize your right to insist that certain processes take place in the state rather than the right to regulate those processes which actually do take place?*

Mr. Lee: *No, I don't think you will find, to be perfectly candid, I don't think you will find any statute or any case which will say that any state has the right to insist that certain processes take place in the State of Arizona. I think that is a Baldwin v. Seelig violation of the Constitution.*

Judge Merrill: *I must confess that I have a little trouble seeing that you are not asking that"* (italics supplied).

In the Court below, as well as here, Appellant was arguing on the basis of such cases as *Chassaniol v. City of Greenwood,* 291 U.S. 584 (1934) and *Federal Compress and Warehouse Co. v. McLean,* 291 U.S. 17 (1934). But the Court recognized that those were cases which involved simply the imposition of a local tax on processes already in existence in the state, and did not require the performance of affirmative acts and the establishment of new facilities and processes such as here.

Appellant, both in the Court below and here as well, suggests that distinctions are to be drawn between situations calling for uniformity and situations calling for diversity (Brief, pp. 23-29). But while such distinctions

may be meaningful in given situations, we submit they have little significance here. Thus, as examples of diversity, Appellant refers to the cases of *Cooley v. Board of Wardens of the Port of Philadelphia,* 12 How. 298 (1851), and *South Carolina State Highway Dept. v. Barnwell Bros.,* 303 U.S. 177 (1938). Cooley involved a state law which required that vessels in the harbor of Philadelphia take on pilots or pay a portion of the pilotage fee, a measure which was clearly a safety measure within the police powers of the state. The *Barnwell* case involved regulation of the width and weight of trucks traveling state highways. These measures were adopted in the interest of highway safety, and the Court held them to be within the police power of the state.

But, on the other hand, are the cases of *Bibb v. Navajo Freight Lines, Inc.,* 359 U.S. 520 (1959) and *Southern Pacific Company v. Arizona,* 325 U.S. 761 (1945), which are cited by Appellant as examples where the principle of uniformity prevailed. In the *Bibb* case, a statute of Illinois required trucks and trailers using state highways to use a certain type of mud guard. After weighing the law's effect in furthering the purported state interest against the strong national interest to keep interstate commerce free from undue burdens, the Court found that the state law would indeed cast such an undue burden on interstate commerce and declared it invalid. In the *Southern Pacific* case, there was involved a law of Arizona limiting the number of cars in passenger and freight trains. After considering the practicability of the state regulation and its effectiveness in meeting state standards in relation to the burden on interstate commerce, the

Court concluded that the burden on interstate commerce was insupportable and it invalidated the law.

But, however pertinent the considerations of uniformity and diversity may have been in the above cases involving vehicle safety regulations, they have little application here. Although Appellant discusses this theory at some length, he does not demonstrate why the present case should fall into the category where diversity between the states is of such paramount importance as to justify the restraint on interstate commerce. Indeed, it is amply clear that the present case, of all cases, is one where uniformity is the desired goal, for obviously, the situation which concerns us here is one which calls for uniformity, which has already seen the attainment of a high degree of uniformity, and which will require even greater uniformity, in the interest of commerce between the states, as our advancements in transport, refrigeration, farming methods, and packing techniques continue. This must necessarily be, because agricultural products are not consumed locally but are shipped all over the nation. If the various states were to adopt local laws making different requirements concerning standards of quality and containers with respect to agricultural products being transported through their jurisdictions, a situation could develop much like that referred to in the cases cited in the briefs, where the product would have to be stopped at each state border for inspection and unpacking in accordance with the local law. Such a result would, of course, not be tolerated under the cases referred to.

Distance today—even where perishable commodities are involved—has little meaning. As is clearly set forth in

the Stipulation of Facts, and as our Brief points out, the States of California and Arizona have become bases of operation for growers and shippers operating on a regional basis in both states. They grow their crops on both sides of the Arizona-California line. Produce grown by them in California has been taken across the state line to Arizona for processing and packing, and vice versa. The authorities of both states have recognized the practice over the years. Growing areas, by virtue of similar soil and climatic conditions, know no artificial state borders, and efficient and enterprising growers make use of these opportunities for worthwhile production in the national interest. Reflecting this closeness and consequent need for uniformity, are the state laws themselves. That the laws of Arizona and California have a very close similarity—and in some respects complete identity—surely requires no serious argument. As we have already indicated, one was modelled after the other. The processes of inspection and packing are the same, including in many cases an inspection by federal inspectors. The containers used are the same. They are even identified under identical tariff numbers prescribed by the Interstate Commerce Commission.

We submit, therefore, that Appellant's argument that the matters here involved do not burden interstate commerce because they are "local" in character has no foundation in reality or in the record of this case. As for his contentions based on an asserted absence of congressional action, these too choose to ignore the clear congressional policy, as expressed in the enactments to be referred to herein, that the channels of commerce be kept

unimpeded for the free flow of agricultural commodities to all parts of the Nation.[10]

The cases relied on by Appellant, we submit, are distinguishable from the cases presented here and do not provide helpful precedents. They all involved the propriety of local taxation or regulation of activities taking place within the state. None of them involved situations such as here where, as the Court below indicated, the effect of state action was to require that operations sought to be performed elsewhere be performed in the state in order that they could be regulated. In none of the cases cited by Appellant was there involved an express prohibition which would prevent commodities produced in the state from being taken out of the state unless first packed in the state, or in the words of Judge Craig, which would say "that no cantaloupe grown in the State of Arizona can leave the State of Arizona without going through a packing shed . . ." (Transcript of Proceedings, November 15, 1968, p. 62, L. 1-4).

Appellant cites the case of *Sligh v. Kirkwood,* 237 U.S. 52 (1915) (Brief, p. 29), but that case is wholly distinguishable from the present case. In *Sligh* there was involved a Florida statute making it an offense to handle citrus fruits unfit for human consumption and injurious to health, and the statute was upheld by the court as a health and safety measure in the exercise of the state's police

[10]At page 7 of his Brief, Appellant himself makes reference to the importance of uniformity in this area. He states:

"The value of standardizing containers for agricultural produce is also borne out by the practice of the United States Department of Agriculture. A number of Federal Marketing Orders prescribe that fruits and vegetables governed by the relevant order must be packed in standard containers."

powers. In the present case, we are not dealing with goods unfit for human consumption, and there is no suggestion whatever that Appellee is packing or shipping any such product. We are dealing here with an absolute prohibition of the transport of Appellee's products across the state line into California even though wholesome, uncontaminated and, as Appellant himself has admitted, of a superior quality among cantaloupes. Moreover, it is a product which has undergone an inspection by Appellant's own inspectors at the field and which has been certificated by Appellant himself for the boundary crossing, after which it is subjected to a rigid inspection by the California inspectors (Stip., App. 38). The *Sligh* case did not involve any question, such as here, whether the State of Florida could require that the packing operation be performed in that State, in packing sheds constructed in that state.[11]

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[11] At page 30 of his Brief, Appellant asserts:

"If Florida, in 1915 . . . can prevent the shipment of immature citrus fruits in interstate commerce, then Arizona, in 1968, can surely prescribe standards of quality, appearance, packing and marketability for cantaloupes to be shipped in interstate commerce . . ."

Apart from the fact that the Florida statute related only to quality and not to appearance or packing at all, Appellant is here posing an issue which is not an issue in this case. Whether Appellants' conclusion follows from his premise, whether Arizona may or may not prescribe standards of quality, etc., is not the issue here. This case proceeds on the basis that Arizona does have standards of quality, standards of inspection, standards for containers, etc., and we are not here challenging these standards or the standardization law as such. We are merely challenging a particular application of the law. We are questioning whether under color of the Arizona law, the Appellant may say to a producer: "You may not process or pack your produce in our sister state where you have your facilities for doing so. You must do it here, or you can let your produce rot." This, we submit, the Supreme Court has clearly and unmistakeably declared, in the cases cited by us, to be violative of constitutional rights. See comments of Court below. Transcript of Proceedings, November 15, 1968, pp. 56, 57.

Appellant also refers to the case of *Pacific States Box & Basket Co.*, 296 U.S. 176 (1935) (Brief, p. 29). That case involved merely the question whether the State of Oregon could prescribe containers to be used for strawberries and raspberries *when packed in the State of Oregon.* The complainant was an out-of-state manufacturer of containers which did not conform to Oregon's standards. He wanted to sell his containers in Oregon. Oregon did not prohibit him from transporting his containers into the state or from selling them there, but merely did not allow the containers to be used in Oregon for raspberries and strawberries. The manufacturer was challenging the Oregon law, contending that his containers should be permitted for use in connection with these commodities. For reasons indicated in the Court's opinion, the Court concluded that the Oregon requirement was justifiable. *The case did not involve the question whether the state could require that strawberries and raspberries be packed in the State of Oregon, as a condition to shipment out of the state.* The state statute made no such requirement, and the case did not involve the question whether the state, by statute or by interpretation of the Director of Agriculture, could prohibit the transportation of strawberries and raspberries out of the state for packing elsewhere. This is amply clear from the opinion of the Court, 296 U.S. 176, at p. 184:

> "The order . . . is aimed, not at the importation or sale of other types of containers, *but at their use in Oregon by packers of raspberries and strawberries,* and the later transportation and sale of the packages. The prohibition of other types involved in prescribing the standard is nondiscriminating. It applies regardless of the origin of the containers. *The plantiff is a*

> *manufacturer of containers, not a packer or shipper of berries.* It is not prohibited from shipping its tin-top containers into Oregon; nor from selling them there . . ." (Italics supplied.)

The *Pacific States Box & Basket Co.* case has no application to the issues before this Court, and we would assume it was because of a realization of this that Appellant, who has been aware of its existence all along, did not see fit to make any reference whatever to this case in his Jurisdictional Statement.[12]

We respectfully submit that the cases relied upon by Appellant afford no basis for a finding that the burden imposed by Appellant's order in the present case is a reasonable one.

We respectfully submit the unanimous Court below was correct in finding that the present case fell clearly within the principles and precedents of this Court exemplified by the *Toomer v. Witsell* case, the *Haydel* cases, the *Schafer* case and the *Lemke* case.

In the case of *Dean Milk Company v. City of Madison, Wis.*, 340 U.S. 349 (1951), where the Supreme Court declared invalid a city ordinance prohibiting sale of milk unless bottled within five miles of the City of Madison, the Court stated:

> "In thus erecting an economic barrier protecting a major local industry against competition from without the State, Madison plainly discriminates against interstate commerce. This it cannot do, ..." (*Id.* at 354)

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[12]The case was cited by Appellant in his Reply Brief in the Court below, but on a wholly different point, namely the question of federal pre-emption.

So here, to require under the circumstances of this case that Appellee construct and maintain processing and packing facilities in Arizona as a condition to sending its products into the stream of commerce would amount to "erecting an economic barrier" in violation of the Commerce Clause.

3. Appellant's order is designed fundamentally to serve local economic interests rather than public health and safety, and the burden imposed by such order upon interstate commerce cannot be justified as an exercise of the police power of the state.

It is Appellant's contention that his order constitutes "a valid and permissible exercise of the police power reserved to the State of Arizona . . . ." (Stip., App. 43).

It is clear that the claimed police power does not relate to the public health and safety. The Standardization Act of Arizona, unlike that of California, does not declare its purpose and objective as being related to the protection of public health or safety. (Compare California Agricultural Code, Section 3 and Arizona Fruit & Vegetable Standardization Act, Ch. 95, Section 2—both cited in the Supplement hereto.)

Furthermore, it is difficult to see how the prohibition which Appellant seeks to impose upon Appellee here can be related to protection of the public health or safety. It is apparent that the product involved here is going *out* of the State of Arizona, not coming into the State of Arizona. It would not be a sufficient answer to refer to the *Sligh* case, because, as we have pointed out, that involved a statute making it a criminal offense to handle within the state citrus fruits unfit for human consumption and injurious to health, whereas here we are dealing with

an express prohibition from interstate transport of fruits which are admittedly wholesome, uncontaminated and, indeed, of a superior quality—unless first packed in Arizona.

Indeed, Appellant makes no claim in his brief that the order has any relationship to the public health or safety. As Judge Merrill suggested at the hearing on the permanent injunction (Transcript of Proceedings, November 15, 1968, pp. 71, 72, 79), any such claim could hardly be supported in view of the state's exemption from the law of a variety of situations which would permit sale of poor grades of fruit within the state. Thus, Section 3-503C of the Standardization Act of Arizona exempts from the requirements of that provision "Any retail sales directly to a consumer" (the Court below suggested even at "roadside stands"); there are also exempted cantaloupes to be "used for charitable purposes or unemployment relief"; also, cantaloupes to be used "by the United States Government or its agencies." How such uninhibited use can be reconciled with any objective for protection of public health and safety is difficult to understand. The situation prescribed here is therefore basically different from that of the *Sligh* case.[13]

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[13]Even where laws profess to be health measures, they may be held invalid where they are not essential for such protection but have the effect of burdening interstate commerce. In the *Dean Milk* case, 340 U.S. *supra*, at 356, the Supreme Court said:

> "To permit Madison to adopt a regulation not essential for the protection of local health interests and placing a discriminatory burden on interstate commerce would invite a multiplication of preferential trade areas destructive of the very purpose of the Commerce Clause. Under the circumstances here presented the regulation must yield to the principle that 'one state in its dealings with another may not place itself in a position of economic isolation.'"

It is apparent that the basic objectives sought to be achieved by Appellant's threatened acts are not related to the public health or safety but are rather economic.[14] Appellant, in the Stipulation of Facts, has indicated his understanding of the objective of the framers of the Arizona law to be "to promote and develop Arizona fruits and vegetables in interstate and foreign commerce and to enhance *the return* to the producers of fruits and vegetables within this State." (Stip., App. 28) (Italics supplied).[15]

In his Brief (p. 56), Appellant speaks of the purpose in terms of enhancement of the "reputation" of Arizona fruits and vegetables and deemphasizes the stipulated understanding as to enhancement of "the return" to the producers of fruits and vegetables within the state. He speaks of the objective of the law as being "to assure that Arizona produce . . . will be identified as Arizona produce" (Brief, p. 21), that cantaloupes going out of Arizona will be "ambassadors of good will" for which Arizona would receive credit (Transcript of Proceedings, November 15, 1968, pp. 45, 79), that "It is within Arizona's legitimate interest to require that interstate can-

[14]Certainly, the objective of state legislation is not to be measured solely by its "stated" purpose. It would surely not be contended that a state could effect a permissible burden on interstate commerce merely by adopting language expressive of an appropriate police power although its fundamental purpose is economic.

[15]At the hearing on the permanent injunction, however, counsel for Appellant stated (Transcript of Proceedings, November 15, 1968, p. 44, L. 24—p. 45, L. 6) that the purpose "is not to protect the consumer . . . . the purpose of this act is to enhance the *reputation* of Arizona fruits and vegetables, in order to enhance *the return* . . . ." (italics supplied).

taloupe purchasers be informed that this high quality Parker fruit was grown in Arizona" (Brief, p. 43).[16] But however the proposition might be phrased, it is clear the basic objective and purpose of the law, as understood by Appellant, is economic.[17]

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[16]At page 79, L. 18, Judge Merrill summarized Appellant's position as follows:

> Judge Merrill: . . . Here, the only problem it seems to me, is that you are not getting credit for good fruit that is sold outside of the state, and this good fruit is not serving the state as an ambassador, that you have got a right to insist that it do.
>
> Mr. Lee: That's correct.
>
> Judge Merrill: You've got a sort of a long arm that reaches out and says, "Give me credit."

As to this theory, Judge Merrill remarked: (p. 81, L. 16-23):

> "I ask the question, whether you have a sufficient interest to be able to insist that fruit grown in the state always act as an ambassador to the state. This is an interesting concept, I must say, that you have a sort of a state property right in all fruit grown in the state, that you can insist that it draw credit for its origin. This is a distinction beyond anything we have in law so far."

The Court pointed out the weaknesses of such a theory from the standpoint of practical experience apart from the legal aspects, as, for example, the fact that inspection for quality is only a "spot check" at best, a sampling procedure merely, since it is not possible to look at every single cantaloupe; also the difficulty of preventing deterioration en route or to assure that the cantaloupes will arrive in good condition. The Court characterized this line of argument as equivalent to saying that "to insure that the oranges are mature or fit for consumption, you have to pack them in the state!" (Transcript of Proceedings, November 15, 1968, pp. 39, 64, 69)

Appellant asserts that cantaloupes not packed in Arizona "would not be identified as Arizona cantaloupes, but would bear the name and address of their California packer" (Brief, p. 21, footnote 7). But if this is so, we cannot see how Arizona's reputation could be hurt by inferior fruit packed out of state. As expressed by Judge Merrill (p. 81, L. 10):

> "if it is not packed in Arizona and it doesn't bear your label, then it is not a reflection on Arizona fruit."

[17]In a footnote on page 5, Appellant sets forth statistics stated to have been compiled by the United States Department of Agriculture with reference to "dollar value" of fruits and vegetables. These were never offered in evidence at any stage of the pro-

The Supreme Court has consistently held that advancement of local economic interests cannot serve as a basis for impeding the free flow of interstate commerce. ***Dean***

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ceedings. They do not form any part of the Stipulation of Facts and constitute no part of the record in this case, nor are they proper subject of judicial notice. Their significance in relation to types of crops, volume, prevailing market conditions, etc., is not indicated. If Appellant's object in making this citation of statistics is to support his statement that the produce industry is one of the leading industries of Arizona, this is a statement with which we would certainly not take issue.

Further statistics are set forth by Appellant as to "prices commanded" by cantaloupes grown in certain Arizona, California and Texas districts on three given dates in 1969 (see Brief, p. 7, footnote 3). This is stated to be for the purpose of emphasizing "the effectiveness of standardization laws in preserving the reputation of a state's produce." It is asserted that whereas Arizona and California have such acts, Texas does not, and the effect of this is supposed to be reflected in the prices at which they were sold in New York City. The statistics are stated to have been based only on "Random Samples of reports of the United States Department of Agriculture's Fresh Fruit and Vegetable Federal-State Market News." As in the case of the other statistics referred to, these reports were never offered in evidence at any stage of the proceedings. The statistics do not form any part of the Stipulation of Facts and constitute no part of the record in this case, nor are they proper subject of judicial notice. Their significance in relation to type of cantaloupe, quality, grade, quantity, prevailing market conditions at point of sale, and other factors affecting price is not indicated. Actually, the comparison is not apt at all, because reference to the Market News report for 6-9-69 shows that the high and low figures given for California and Arizona cantaloupes is for the *best* quality cantaloupes, whereas the figures shown for Texas cantaloupes starts with the *fair* quality at $5.50. The range of the better quality is actually $9.00-$10.00. This shows that on the better quality, there is not a great deal of variation. The same applies to the figures for 6-16-69, when better quality in Texas brought $6.50-$8.00, fairly comparative. It was only the "poor condition" that was as low as $2.00.

If one could justifiably draw any conclusions from these statistics, they would tend to prove our point that there is a very close parallel between the practices, standards and procedures of Arizona and California, and that at least on two of these dates selected, California brought higher prices than Arizona for cantaloupes of comparable quality. The fact is, however, that the Arizona and California product is considered in the trade of a

Milk Co. v. City of Madison, Wis., 340 U.S. 349 (1951); *H. P. Hood and Sons v. DuMond*, 336 U.S. 525 (1949); *Toomer v. Witsell*, 334 U.S. 385 (1948); *Foster-Fountain Packing Co. Inc., v. Haydel*, 278 U.S. 1 (1928); *Johnson v. Haydel*, 278 U.S. 16 (1928).

In *H. P. Hood and Sons v. DuMond*, 336 U.S. 525, (1949), this Court said:

> ". . . . it is only additional restrictions, imposed for the avowed purpose and with the practical effect of curtailing the volume of interstate commerce to aid local economic interests, that are in question here. . . ." (*Id.* at p. 530)
>
> "The state may not promote its own economic advantages by curtailment or burdening of interstate commerce." (*Id.* at 532)

And in *Baldwin v. Seelig*, 294 U.S. 511 at 522, 524 (1935) the Court said:

> "Nice distinctions have been made at times between direct and indirect burdens. They are irrelevant when the avowed purpose of the obstruction, as well as its necessary tendency, is to suppress or mitigate the consequences of competition between the states. . . . If New York in order to promote the economic welfare of her farmers, may guard them against competition with the cheaper prices of Vermont, the door has been opened to rivalries and reprisals that were meant to be averted by subjecting commerce between the states to the power of the nation.

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superior quality to that of the Texas variety, and there is no indication that the standardization laws are a material factor at all.

Appellant's attempt to advance statistics such as the above demonstrates that the act in question has fundamentally an economic purpose, so far as Appellant's understanding goes.

"The argument is pressed upon us, however, that the end to be served by the Milk Control Act is something more than the economic welfare of the farmers or of any other class or classes. The end to be served is the maintenance of a regular and adequate supply of pure and wholesome milk, the supply being put in jeopardy when the farmers of the state are unable to earn a living income. Nebbia v. New York, 291 U.S. 502, 78 L. ed. 940, 54 S.Ct. 505, 89 A.L.R. 1469, supra. Price security, we are told, is only a special form of sanitary security; the economic motive is secondary and subordinate; the state intervenes to make its inhabitants healthy, and not to make them rich. On that assumption we are asked to say that intervention will be upheld as a valid exercise by the state of its internal police power, though there is an incidental obstruction to commerce between one state and another. This would be to eat up the rule under the guise of an exception. Economic welfare is always related to health, for there can be no health if men are starving. Let such an exception be admitted, and all that a state will have to do in times of stress and strain is to say that its farmers and merchants and workmen must be protected against competition from without, lest they go upon the poor relief lists or perish altogether. To give entrance to that excuse would be to invite a speedy end of our national solidarity. The Constitution was framed under the dominion of a political philosophy less parochial in range. It was framed upon the theory that the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division."

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"Whatever relation there may be between earnings and sanitation is too remote and indirect to justify

> obstructions to the normal flow of commerce in its movement between states. Cf. Asbell v. Kansas, 209 U.S. 251, 256, 52 L. ed. 778, 781, 28 S. Ct. 485, 14 Ann. Cas. 1101; Hannibal & St. J. R. Co. v. Husen, 95 U.S. 465, 472, 24 L. ed. 527, 530."

It was the above principle which guided this Court in the *Toomer v. Witsell* and *Haydel* cases.

The question here is not whether protection of local industry is a "proper" or "improper" purpose, or whether it is or is not a lawful purpose, as Appellant suggests (Brief, pp. 34, 35, 36, 37, 38).[18]

The question is rather how far a state may go in imposing burdens upon interstate commerce in the interest of protecting local industry.[19] As applied to the present case,

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[18]Appellant makes the statement (Brief, p. 6) that "growers in Arizona found that it was *impossible* to establish a reputation for quality produce in isolation from the reputation of 'Arizona produce' generally" (italics supplied.) This is a patent overstatement. It is supported neither by history, experience, nor fact. It is certainly not supported by the Stipulation of Facts. (See App. 28)

As for Appellant's statement (Brief, p. 7), referring to testimony which would be given by Mr. O. D. Miller, if called to testify, to the effect that the Arizona Act "has been successful in achieving its purpose," we would point out, first, such success has been achieved under circumstances permitting Appellee and various other shippers over the years to do their packing in California; and, second, to point out again that we are not seeking to invalidate the Arizona Act as such but are challenging a particular application and interpretation of the Act by the Supervisor.

[19]Thus, the three-judge Court below inquired whether it was Appellant's position that the California wine industry, for example, could obtain state legislation which would prohibit bulk shipment of wine and require that all wine be bottled in California "and show on the label that it was California wine?"; or that a state could require that all wheat be packaged into bread before shipping it in interstate commerce so that it could be labeled as a product of the state; or that Arizona, for example, could require that its fine long staple cotton be milled and

we respectfully submit the answer is to be found in the decisions referred to above. These decisions rest on the basic principle that preservation of free movement of goods across the Nation is a paramount concern. We are not 50 separate and independent countries. We are separate and independent states of one Union. Both the courts and Congress, through various enactments over the years, have recognized that the borders between the states must not be barricaded to commerce among them. Is it reasonable to say that a grower may not cross the state line to do in a neighbor state what he would do in respect of interstate commerce in his state of origin?

At p. 35 of his Brief, Appellant appears to concede that the state may not require a grower to construct a packing shed in the state. Yet that is the necessary effect of his order, as we have already shown, and under the cases cited, it is invalid. Appellant refers (Brief, pp. 36, 37) to "facts judicially known or proved" as superseding the legislative act. We respectfully submit ample facts are to be found here in the record before the Court, including Appellant's own unavoidable admissions concerning the effect of his order.[20]

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woven into cloth or fabrics before it could be shipped in interstate commerce so that it would be "labeled as Arizona grown long staple cotton"; (Transcript of Proceedings, November 15, 1968, pp. 51-54.)

In considering such questions, the court is not indulging in a legislative judgment or reviewing the wisdom of a law, as suggested by Appellant (see, for example, his Brief, p. 36). Evaluation of the wisdom of a law and the evaluation of its effect in terms of the burden cast upon interstate commerce are two different things, as the cases cited by Appellant himself clearly show. See, for example, the *Southern Pacific Company v. Arizona* and *Bibb v. Navajo Freight Lines, Inc.* cases.

[20]In neither the case of *Brotherhood of Locomotive Firemen and Enginemen v. Chicago R. I. & P. R. Co.*, 393 U.S. 129

4. Any interest the State of Arizona may have in the quality of Appellee's crops is adequately protected by the necessity of conforming to the equally as stringent, if not more stringent, requirements of Arizona's sister state, the State of California, as well as by other alternative methods available to Appellant.

Even if local economic or other interests are entitled to protection here, the furtherance of such interests does not require the prohibition sought to be imposed by Appellant.

As the facts show, Appellee's cantaloupes, after having undergone an inspection at the field by Arizona inspectors, undergo a thorough inspection by inspectors of the State of California after their arrival at Blythe. In many instances, there is also a federal inspection. The processing and packing operation is carried out in the same manner as is followed by Appellee in respect of its cantaloupe crops at Yuma, using similar equipment and methods. The conditions and standards under which the work is accomplished are the same in both States, and the containers used are identical.[20a] The standardization laws themselves parallel one another very closely. As Mr. Gipe has testified, the California inspection is as stringent, if not more so, than that of the State of Arizona.

(1968) nor the case of *Bayside Fish Flour Co. v. Gentry*, 297 U.S. 422 (1936), cited by Appellant on pp. 36 and 37 of his Brief, were there involved facts such as in the present case, where the effect of State action was to require the complainant to perform, in the state, operations he wished to perform in a sister state. In the *Brotherhood* case, there was involved a state statute specifying the minimum number of persons in a train crew in the state, and in the *Bayside* case, at issue was a state law regulating the manufacture of fish flour in the state.

[20a]If any further specification on the container as to source should be desired, for purposes of identification, this may be accomplished by simpler measures than by resort to the drastic action proposed by Appellant.

The Supreme Court has declared that a State law imposing restrictions on interstate commerce is rendered all the more unreasonable if there exist reasonable nondiscriminatory alternatives. Thus, in *Dean Milk Co. v. City of Madison, Wis.*, 340 U.S. 349 at page 354 (1951), the Court said:

> "This [discriminatory action] it cannot do, even in the exercise of its unquestioned power to protect the health and safety of its people, if reasonable nondiscriminatory alternatives, adequate to conserve legitimate local interests, are available." [Bracketed matter supplied]

We respectfully submit the application to Appellee's cantaloupes of California's comparable standards and procedures affords the State of Arizona adequate assurance within the meaning and spirit of the above principle. Clearly, any objective to prevent deceptive packs or arrangements is fully satisfied by compliance with the California requirements. The agricultural departments of California and Arizona, by virtue of their strong common interests, have a close working relationship. It would be a simple matter to arrange, if desired by Arizona, for a certificate to be delivered to the Arizona authority attesting to the fact that the product has been processed and packed in conformity with California requirements. Such certificate, or other satisfactory device, should reasonably satisfy the local interests of Arizona in respect of packing standards, including nondeceptive packs.[21] An ar-

[21]At page 40 of his brief, Appellant cites a few language "differences" in the two state laws, but it is apparent these are of no practical consequence. As Mr. Gipe testified, the workers and inspectors all go about their work in the identical way,

rangement of a similar nature was suggested by the Court in the *Dean Milk Company* case, *supra* at pages 355, 356. As we have seen, there is already a California inspector on the Arizona side of the line, and a procedure for certificates of clearance of the border crossing is already in effect.

If it is the desire of the State of Arizona to make inspection of its own, as suggested in Appellant's brief (page 41), it is free to adopt measures appropriate to that end which do not unduly burden interstate commerce as here. Appellant contends his inspection can be made only in a packing shed and nowhere else. As we have shown above, the record of this case does not support such a contention.

Indeed, Appellant's position is hardly supported by the Statute of Arizona itself, which provides (Section 3-486):

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whether they are on the Arizona side or the California side, the California inspection being possibly more stringent.

The differences in packing to which he refers (Brief, pages 41, 44) are not differences in the law, or differences which an inspector could enforce, but simply *individual differences* of particular growers in the manner of packing within the permissible standards. (Depo., David Gipe, June 6, 1968, pages 56, 62.)

At page 41 of his Brief, Appellant attributes to Mr. Pike testimony to the effect "that the enforcement of statutory standards by one group or another group of inspection officers can result in appreciable differences." (Depo. L. J. Pike, June 6, 1968, p. 12, L. 10-16). The record does not justify this statement at all. The question put to Mr. Pike by his counsel was: "Does it make a difference, for example, who *supervises* the packing in these containers?" (italics supplied). To this question Mr. Pike replied "Certainly." Clearly, the *supervising* of the packing is not performed by the inspectors, but by plant personnel. The inspectors do not direct or supervise plant personnel or plant operations but merely observe and make spot checks. Company supervisors may, of course, apply individual differences within the range of permissible standards, and it must be assumed that this is the sense in which the question was understood by Mr. Pike.

"Section 3-486. Supervisor; inspection powers

A. The supervisor may enter and inspect every place or vehicle within the state where fruits and vegetables are produced, received, packed, delivered, loaded, shipped, offered for sale or sold for interstate shipment, and inspect fruits, vegetables and containers found therein.

B. He shall have the same powers in the performance of his duties as other peace officers, and may, while exercising such police powers, seize or hold as evidence the part of a pack, load, lot, consignment or shipment of fruits or vegetables packed, delivered for shipment, loaded, shipped, being transported, offered for sale or sold in violation of this article, as in his judgment may be necessary to secure the conviction of the party he knows or has good reason to believe is violating any provision of this article."

Very clearly the law itself contemplates that Appellant is not limited to a packing shed in carrying out any inspection. He may enter and inspect "every place or vehicle" and at any stage, that is to say, when "produced, received, packed, delivered, loaded, shipped, offered for sale or sold." He has the whole gamut of stages and operations available to him. As the evidence shows, he does in fact already make an inspection at the time the fruit is loaded into the trailer for transport to Blythe and he issues a certificate of clearance at the time.

In this regard, Judge Merrill inquired as follows of counsel for Appellant at the Hearing of November 15, 1968, Transcript, page 49, lines 2-6:

"Judge Merrill: It is possible in the field to determine whether the cantaloupes are edible?

Mr. Lee: That is correct.

Judge Merrill: And this can be done . . .
Mr. Lee: This can be done."

All this is wholly apart from the fact that any grower and shipper who wants to stay in business under today's highly competitive standards and practices must, of necessity, see to it that his product is of good quality and is suitably and properly packed. If he is to maintain his reputation in the trade, he must, in his own economic self-interest, maintain a high quality pack. We are dealing here with a product of a highly perishable nature, one which is not susceptible of storage. It is a product which is subject to inspection by the buyer or his representative at the site. Obviously, under such conditions, entirely apart from the requirements of the law, the product must measure up if it is going to sell. As Mr. Gipe stated, "These buyers inspect the product." (Depo., David Gipe, June 6, 1968, page 29, lines 23-26.)

We respectfully submit, under the circumstances which prevail here, no detriment accrues to the interest of the State of Arizona. Indeed, Appellant himself has admitted that the State would suffer no damage or detriment, so far as standards of packing are concerned, if Appellee were permitted by order of Court to do so at Blythe (Depo., L. J. Pike, June 5, 1968, p. 59, L. 5-20).

5. Appellant's long continued practice of permitting packing across the line in California emphasizes the unreasonableness of his present order.

As previously shown, it was in the light of the long-standing practice of packing at Blythe, publicly and officially recognized by Appellant in his annual reports extending over many years, and indeed participated in by

him, that Appellee undertook to institute and develop a cantaloupe crop program as an integral part of its general program for development of the Indian lands.

Appellant refers to his long-continued approval of, and participation in, this practice as "past lapses" (Brief, pp. 38-39). In both his Jurisdictional Statement (pp. 7-8) and in his Brief (p. 39), Appellant attempts to explain his permission of across-the-line packing in the many years prior to 1968 by arguing that this was illegality of a low-grade sort, whereas the across-the-line packing contemplated by Appellee in 1968 would have represented illegality of a high-grade sort, and consequently he had to take action. In his Jurisdiction Statement (pp. 7-8) he said:

> "Even after the 1965 amendment, the appellant has allowed small amounts of cantaloupes to be shipped out of the State in bulk, and therefore not in 'closed standard containers approved by the supervisor.' The appellee itself was permitted to ship in bulk 400 acres of cantaloupes harvested from its Parker ranch in 1967. Stipulation, Exhibit B. Aside from this shipment, however, all of the shipments in violation of the 1965 amendment to the Act were by small shippers and in comparatively insignificant amounts. *Ibid.*"

And in his Brief (p. 39):

> "Shipments in violation of the Act have been comparatively small and, with the exception of the Appellee, none have been by a major shipper."[22]

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[22]On page 38, as well as on page 8, of his Brief, Appellant refers to a 1965 amendment in the Arizona Act. He refers to Sec. 3-503C, which provides that cantaloupes be packed in "closed standard containers approved by the supervisor." Then

This argument certainly does not commend itself to reason, and, we respectfully submit, is hardly the kind of argument which can have much appeal to this Court. In point of fact, the amount of cantaloupes shipped in years prior to 1968 across the State line was not at all insignificant. As Appellant's own official reports will show, they were quite comparable to the volume of shipments in 1968, but this is entirely beside the point, because if an act is illegal, it is illegal regardless of its size or scope. If it is illegal to transport 500 acres of cantaloupes across the State line into California for processing and packing, it is equally illegal to transport 300 acres or 200 acres or 100 acres.

We would rather suggest, as we did in the Court below, that Appellant's practice of permitting interstate shipments in years prior to that here in question was

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he goes on to say that prior to 1965, Sec. 3-503G provided that "No containers are established for unpacked or loose cantaloupes."

From a reading of this, one might draw the conclusion that there was no standard container requirement in the law prior to 1965. That is not the case at all, however. Prior to 1965 the standard containers were expressly described and established in the law itself. Sec. 3-503D set forth the express dimensions of each type of container, depth, width and outside length. All the 1965 amendment did was to provide greater flexibility by permitting the Supervisor to approve the containers without having to go to the Legislature for each change.

As for the deletion of Section 3-503G, "No containers are established for unpacked or loose cantaloupes," this too effected no change in the existing law. Prior to 1965 as well as after, the law contained a section relating to packing, sale or delivery within the state (Section 3-482A) and providing for products which could be handled unpacked or in bulk (Section 3-518). Obviously the containerization provisions would have no application to products which could be handled loose, in bulk, unpacked, and Section 3-503G was superfluous.

Thus, in terms of the question presented in this case, the 1965 Amendment is without significance at all.

entirely legal, and his interpretation of the statute to permit such interstate transport was lawful and proper. We submit this long-continued practice of the administrative officer charged with administration of the law should be given effect in this case. We submit this is called for under Appellant's own line of argument on page 13 of his Jurisdictional Statement, where he said:

> "In the instant case, the governing rule of statutory interpretation is that which prescribes that 'When faced with a problem of statutory construction, this Court shows great deference to the interpretation given the statute by the officers or agencies charged with its administration.' *Udall v. Tallman*, 380 U.S. 1, 16 (1965). *Udall v. Tallman* arose in the context of a federal statute, but the principle is equally applicable to interpretation of state statutes, particularly where upsetting the administrative officer's interpretation is potentially as disruptive as in the instant case."

With this principle we agree. It is to be applied, however, with respect to the statutory interpretation which the Administrator has applied consistently and uniformly over a period of years, not to an interpretation which represents a sudden, abrupt, and arbitrary switch from the long-continued practice and interpretation upon which he has caused interested parties to rely.

Appellant cites the case of *Lassen v. Arizona*, 385 U.S. 458 (1967). This was a case in which the State of Arizona had been taking property rights without compensation, and on behalf of the State it was argued this had been its practice for many years. The Supreme Court held, in effect, that a state can acquire no vested right to take

property without proper compensation merely because it continues to do so for many years. No one would question this result. The significant thing for us is that the State of Arizona in that case was seeking to rely upon its own *self-serving* practice over the years. In the present case, contrariwise, Appellant as representative of the state is seeking to *rid himself* of the consequences of his long-continued practice of interpretation and application of the law. The Supreme Court in *Lassen* was not disposed to permit the State to benefit from its own wrongful conduct and thereby to perpetuate a wrong.

We respectfully submit that Appellant's long-continued application of the law is not without significance in this case and is not "irrelevant" as he contends (Brief, p. 38), but is very meaningful in terms of the proper application of the law. We submit Appellant's past action was consistent with a proper interpretation and application of the law in light of constitutional requirements and he has no cause to stultify himself in relation to his past conduct.

Appellant asserts he might have done differently "had he been properly advised" (Brief, p. 38). Are we to understand from this that Appellant has been wrongfully advised in the past, or that he has not been advised at all? His practice was a matter of public record each year, so that we must reasonably assume knowledge thereof was had by the law officers and other public officials of the State of Arizona, as well as the public generally. We submit, however, this merely reflects the general acceptance of the propriety of the practice, and there is no cause for Appellant to demean himself or the conduct of the legal representatives of the State of Arizona.

III

THE THREATENED ACTION OF APPELLANT IS CONTRARY TO THE INTENT OF CONGRESS AS EXPRESSED IN FEDERAL ENACTMENTS REGULATING INTERSTATE COMMERCE IN AGRICULTURAL PRODUCTS, AND IS, THEREFORE, INVALID UNDER THE SUPREMACY CLAUSE[23]

Under the supremacy clause of the Constitution, Article VI, it has been the long established rule that where the Federal government has entered a field which is subject to its control, as for example, interstate commerce, the states may not thereafter enforce their own statutes or regulations in a manner which is contrary to or will defeat the objectives of the Federal plan. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218 (1947); *Hill v. State of Florida*, 325 U.S. 538 (1945). In the *Hill* case, this Court held that even in the absence of a direct conflict between the federal enactment and the state action, the latter cannot be upheld where it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." (325 U.S., *supra*, at p. 542)

The Federal plan and purpose in respect of agricultural products, which provide the food and fibres which sustain the Nation, are unmistakably clear.

The Congress of the United States has adopted a series of enactments which have direct application to fruits and vegetables in interstate commerce. Among these are the Agricultural Adjustment Act, 50 Stat. 246, Title 7, U.S. Code, Sections 601 et seq.; Agricultural Marketing

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[23]This was one of the grounds upon which Appellee relied in the Court below. The Court did not find it necessary to review this issue, having reached the conclusion that Appellant's action would be violative of the commerce clause. We consider the issue of such weight as to merit the Court's consideration on this appeal.

Act of 1946, 60 Stat. 1087, Title 7, U.S. Code, Sections 1621 et seq.; Standard Container Act of March 4, 1915, Ch. 158, 38 Stat. 1186, 1187, Title 15, U.S. Code, Sections 234-236;[24] and Perishable Agricultural Commodities Act of June 10, 1930, 46 Stat. 531, Title 7, U.S. Code, Sections 499a et seq.

In the Agricultural Adjustment Act, *supra,* Title 7, U.S. Code, Section 601, the Congress has made the following declaration of conditions:

> "It is declared that the disruption of the orderly exchange of commodities in interstate commerce impairs purchasing power of farms and destroys the value of agricultural assets which support the national credit structure and that these conditions affect transactions in agricultural commodities with a national public interest, and burden and obstruct the normal channels of interstate commerce."

Further, at Title 7, U.S. Code, Section 602:

> "It is declared to be the policy of Congress . . . (3) Through the exercise of the powers conferred upon the Secretary of Agriculture under this chapter, to

[24]In 1968, Congress enacted Public Law 90-628 (82 Stat. 1320), which repealed certain standard container acts, namely those of 1916 and 1928 relating to certain types of baskets and other containers, and at the same time made certain amendments to the "Fair Packaging and Labeling Act" of 1966 (80 Stat. 1296; 15 U.S.C. 1451) on the basis that "With the enactment of this section, there will then be no question that containers now subject to the two Standard Container Acts will not be exempt from regulation under the Fair Packaging and Labeling Act": and that "The safeguards contained in the Federal Food, Drug and Cosmetic Act and the Fair Packaging and Labeling Act are adequate to provide this needed protection." See legislative history, contained in "Explanation of The Bill", in House Report No. 1107, Congressional Record, Vol. 114 (1968), as reprinted in 3 U.S. Code Congressional and Administrative News, pages 4462 and 4463, 90th Congress, 2nd Session 1968.

establish and maintain such container and pack requirements provided in Section 608c(6)(H) of this title, such minimum standards of quality and maturity and such grading and inspection requirements for agricultural commodities enumerated in Section 608c(2) of this title, other than milk and its products, in interstate commerce as will effectuate such orderly marketing of such agricultural commodities as will be in the public interest."

In the Agricultural Marketing Act of 1946, Title 7, U.S. Code, Section 1621, the Congress expressed its intent to provide for an integrated administration of all laws enacted by Congress to aid the distribution of agricultural products through research, market aides and services, and regulatory activities, to the end that marketing methods and facilities may be improved, that distribution costs may be reduced, and that the price spread between the producer and consumer may be narrowed.

By the same Act, the Secretary of Agriculture was directed to determine the best methods of processing, preparation for market, packaging, handling, transporting, storing, distributing and marketing agricultural products. (7 U.S.C. Sec. 1622(a)); to assist in the development and establishment of more efficient marketing methods, practices and facilities for the purpose of bringing about more efficient and orderly marketing, and reducing the price spread between the producer and the consumer (7 U.S.C. Sec. 1622(b)); to develop and improve standards of quality, condition, quantity, grade and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial

practices (7 U.S.C. Sec. 1622(c)); to conduct, assist, foster, and direct studies and informational programs designed to eliminate artificial barriers to the free movement of agricultural products (7 U.S.C. Sec. 1622(b)); to inspect, certify, and identify the class, quality, quantity, and condition of agricultural products when shipped or received in interstate commerce, under such rules and regulations as the Secretary of Agriculture may prescribe (7 U.S.C. Sec. 1622(h)); and to determine the needs and develop or assist in the development of plans for efficient facilities and methods of operating such facilities for the proper assembly, processing, transportation, storage, distribution and handling of agricultural products (7 U.S.C. Sec. 1622(i)).

The Perishable Agricultural Commodities Act is an act designed to protect the producers of perishable agricultural products, by setting up a system of federal licensing for persons handling such products as dealers, brokers, commission merchants, and setting up standards and procedures with respect to inspection, sale, shipment, condition, grade, quality, size, weight, pack etc. As stated in *Zwick v. Freeman,* 373 F.2d 110, at 116 (C.C.A. N.Y. 1967), the federal Act was enacted to provide "a measure of control over a branch of industry which is almost exclusively in interstate commerce, is highly competitive," and should have the benefit of federal protection.

The provisions cited above give clear evidence of the national interest, as declared by the Congress of the United States, to remove impediments to the free flow of agricultural commodities to market and to improve the

efficiency of facilities and methods for processing agricultural commodities in preparation for their shipment to market. The interpretation of the Arizona law which Appellant is seeking to enforce is directly contrary to these objectives, since it would have the effect of preventing Appellee from improving the efficiency of its facilities and processes for handling its crops and would directly impede the interstate transportation of its crops.

Pursuant to the authority conferred upon him by the above enactments, the Secretary of Agriculture has promulgated a series of regulations which relate to such matters as inspection, certification and standards for fresh fruits and vegetables, including standards for grades of cantaloupes. (CFR, Title 7, Subtitle B, Ch. I, Subch. C. Part 51). At page 7 of his Brief, Appellant himself refers to various marketing orders for fruits and vegetables promulgated by the Department of Agriculture in carrying out the purpose and intent of the above laws to achieve uniformity among the states. Thus, the regulations referred to by Appellant himself relate to fixing of size, capacity, weight, dimensions, markings, and pack of containers which may be used in packaging or handling of various fruits, such as pears, nectarines and prunes.

Indeed, the Arizona law itself provides, in Section 3-499F, that "Nothing in this article shall be construed to conflict with any state or federal law or regulation regarding net weight markings on containers or subcontainers."

Under the Perishable Agricultural Commodities Act, the Secretary of Agriculture has promulgated an exten-

sive body of rules and regulations governing sales and purchases, and handling, of agricultural commodities (C FR, Title 7, Part 46).

It is clear, we submit, that the Congress of the United States has evinced a deep concern over the maintenance of a free and unimpeded flow of fruit and vegetable commodities in interstate commerce; further, that it has occupied the field to such a degree and with such unmistakable emphasis as to preclude any state action which would arrest the movement of such commodities at its borders unless first packed in the state.

As stated in *H. P. Hood and Sons v. DuMond,* 336 U.S. *supra,* at 543:

> "When it is considered that the Federal Act was passed expressly to overcome disruption of the orderly exchange of commodities in interstate commerce and conditions found to burden and obstruct the normal channels of interstate commerce, 7 U.S.C. section 601 . . ., it seems clear that we cannot sustain the State's argument that its restrictions here involved supplement and further the Federal scheme." *Id.* at 543.

IV

APPELLANT'S CONTENTIONS CONCERNING EFFECT OF DISTRICT COURT'S DECISION ON ENFORCEMENT OF ARIZONA LAW AND ON "STANDARDIZATION LAWS" IN GENERAL ARE WITHOUT BASIS.

At pages 11 and 12 of his Jurisdictional Statement, Appellant states that "The district court has necessarily held that where enforcement of a state's agricultural standardization laws would be impossible without requir-

ing possible expenditures of money by certain farming corporations, enforcement of standardization laws under such circumstances is unconstitutional," and that "the lower court's holding has cast a shadow not only over the enforcement proccedures of Arizona's Standardization Act, but also over those of all other states which have adopted standardization laws in an attempt to enhance the long-run reputation of their states' produce." In his Brief, pages 7 and 8, Appellant states that the "holding of the lower court that a state is powerless to prevent the shipment of its produce which does not conform to standards of quality and pack prescribed by that state's statutes casts serious doubt on the constitutionality of the enforcement of standardization laws in all states." Appellant cites references to the laws of 17 states having "some type of" standardization law. (Brief, p. 44, fn. 10)

The suggestion that the Court below held to the effect stated by Appellant, we respectfully submit, is a distortion of the District Court's opinion.

It has never been contended by us at any point in these proceedings, nor has the three-judge District Court below held, that the standardization law of Arizona, as such, is unconstitutional or invalid, or that the State of Arizona is not entitled to enforce its standardization law, or is not entitled to enforce its standardization law with its own inspectors.

Appellant asserts, as though it were a point of dispute, that "it is within Arizona's constitutional authority to enact a standardization law for fruits and vegetables. It necessarily follows that Arizona has the authority to enforce that law." (Brief, p. 43). We have never taken issue

with these propositions, nor has the Court below questioned them.

The law of Arizona, its provisions, standards and requirements, we submit, are entitled to full enforcement by the State of Arizona *as to all packing operations which take place in the state.* Appellee has for many years operated a packing shed at Yuma, Arizona, where it has packed its Yuma cantaloupes, among other commodities, and, in connection with such operations, Appellee has at all times been unquestionably subject to the standards and inspection procedures and requirements set up by the Arizona law.

But, the question here, as indicated by the Court below, is simply *whether the State of Arizona can require that the packing operations be performed in the state.*

This is the sole issue here, and the three-judge Court below held that in forbidding Appellee to take cantaloupes out of the state without first packing them in Arizona, Appellant, as Supervisor of Inspection, was going too far.

The Court below stated that "A reading of the Act reveals no clear basis nor authority for the issuance of the order by the defendant" and what was in question was "the construction placed upon that Act by the Superintendent and the constitutionality of the order issued by him pursuant to his construction." (App. 62) So far as the Act itself is concerned, it contains no express provision that packing shall, or must, be done in the State of Arizona. It addresses itself to operations and activities, including packing, when they take place in the State of Arizona. Indeed, certain statements of Appellant himself indicate that this must necessarily be so. For example, on

page 22 of his Brief, Appellant states that "It is immaterial to the appellant when or where the cantaloupes are packed . . ." and further "It is immaterial to the appellant whether the appellee packs its cantaloupes in or out of a packing shed." This would suggest the view that the Arizona Act does not, in terms, contain any provision specifying where the packing *must* be performed, and nowhere in Appellant's argument is there any suggestion that the Act, in terms, does this.[25] Indeed a simple reading of the Act would indicate that it addresses itself to packing when performed in the State. Section 3-482, relating to containers, on its face refers to packing "in this state." Even Section 3-499 of the Arizona law, the section relating to "name of the orchard or farm on containers", to which Appellant makes reference on page 43 of his Brief, clearly applies to cases where the product is packed in the state. That section calls for the name of the packer "together with a sufficient address to permit ready location of the packer," presumably for enforcement purposes rather than "credit" purposes, as suggested. Obviously, the address in question must have reference to an address within the state. This is corroborated by Appellant himself, on page 43, where he contends

[25]Appellant asserts that the statute of Arizona does not in terms require Appellee to construct a packing shed in Arizona. At the same time, based on his premise that it is only in the packing shed that he can make an inspection of the cantaloupes, Appellant must acknowledge, as we have already shown, that Appellee must establish a packing shed and facilities at Parker, Arizona, if it is to be permitted to ship its cantaloupes out of the state. Thus, Appellant is, in effect, saying: "The law of Arizona does not in terms require it, but I am interpreting the law so as to require that you do your packing in Arizona and that you build a packing shed here. However, since the law does not in terms require it, you have no grounds for complaint."

that a provision in almost identical terms in California would call for a California address.[26]

We submit, therefore, that there is no basis whatever for Appellant's contention that enforcement of the state's agricultural standardization laws would become "impossible" as a result of the District Court's decision. As for the District Court's ruling "casting doubt" upon laws of other states, we respectfully submit Appellant is attempting to raise issues were none actually exist. It is not quite clear what the necessary implications of the expressions "casting a shadow" or "casting doubt" are. However, it is amply clear no basis for the statement exists. The Court below did not have before it the laws of these other states (with the exception of California, where the packing in this case was accomplished). The laws of these other states were not in issue. These laws did not enter into the pleadings. They were not subject of discussion or mention in the Stipulation of Facts. There was no showing of any kind in the Court below what the terms and provisions of these laws are, their purpose, scope, or intent. There was no showing at all as to the interpretation or application of any such "standardization law" (or what a so-called "standardization law" is) in terms of shipments out of state in interstate commerce or how they would be interpreted or applied to facts and circum-

[26]In its Opinion and Order, the District Court on its own initiative considered the matter of abstention and concluded "We do not believe the instant case an appropriate one to invoke the abstention doctrine" (App. 60-61). This has not been raised as an issue at any stage of the proceedings, and in his Jurisdictional Statement (p. 13, fn. 4), Appellant states "At this stage of the proceedings, we do not feel that abstention should now be an issue."

stances such as exist here. Actually, it would appear that these laws are not being interpreted to apply to interstate shipments at all. The Illinois statute, for example, expressly so provides, thus giving recognition, in statutory form, to the proposition enunciated by the three-judge Court in this case:

> "No provision of this Act shall apply or be deemed to apply to foreign or interstate commerce excepting insofar as may be permitted by the constitution of the United States, the Acts of Congress and the treaties made thereunder, nor to transactions subject to the provisions of the 'Perishable Agricultural Commodities Act, 1930.'' § 161, Chapter 5, Smith-Hurd Illinois Annotated Statutes (1966).

For other examples, see § 2314, Title 15, Burns Indiana Statutes (1964); and § 5-5-1, Title 5, Utah Code (1953).

The fact is that neither party considered these "other" laws relevant to the issues tried and heard by the Court below, and they were not involved in any way. No mention of any such laws was made except for the general passing reference in Appellant's Brief in the Court below, repeated in the Jurisdictional Statement and now here again.

To argue that the decision of the Court below "has cast a shadow" on these "other" statutes is, we submit, without foundation.

Appellant's contention that these "other" laws (which includes California) have relevance here is most difficult to reconcile with the position taken by Appellant below, both at the hearing and in briefs, that the law of Cali-

fornia, which closely parallels the law of Arizona, was totally irrelevant to the issues. Indeed, this position is expressed also in the Jurisdictional Statement, where Appellant finds it fits in with his then line of argument: "The existence or non-existence and similarity or lack of similarity of a standardization law in California are therefore irrelevant" (footnote, p. 25).

If the law of California, after which the Arizona law "was patterned" (Appellant's Jurisdictional Statement, p. 12) is irrelevant, what possible relevance can the laws of the other states have?[27]

We respectfully submit, the laws of the "other" states have no bearing upon the issues before this Court.[28]

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[27]Possibly because of this dilemma, Appellant in his present Brief has changed his position regarding the relevance of the California law. At page 40, he says: "The existence of standardization acts in California and other states is relevant . . ."

[28]Although they are not involved, we have nevertheless investigated the laws of the 16 states besides California cited by Appellant. We find, first of all, that Appellant's references are not to "standardization" laws as such, but to the entire body of state statutes relating to agriculture in most of the named states. For example, Florida Statutes Annotated, Title 33, and Idaho Code, Title 22, relate to "Agriculture, Horticulture and Animal Husbandry". Smith-Hurd Illinois Annotated Statutes, Chapter 5, Burns Indiana Statutes, Title 15, and Tennessee Code, Title 43, deal with "Agriculture and Horticulture".

Although each of the cited statutes is of a similarly broad scope, composed of many chapters and subchapters covering diverse subjects related to agriculture, our research shows that many of them do not include anything which could be properly classified as a "standardization act" similar to or even comparable to the Arizona Fruit and Vegetable Standardization Act. No "standardization" provisions at all were found in the cited statutes of Indiana, Iowa, Tennessee or Wyoming.

Although the remaining statutes cited did contain some provisions of a "standardization" type, they have special provisions which on their face raise serious question whether they would have any application under facts such as we have here. Indeed,

Appellant argues (Brief, p. 36) that "it is impossible to determine from the lower court's cryptic opinion the basis for its constitutional holding. . . ." Similarly in his Jurisdictional Statement seeking review of the District Court's decision, Appellant argued that the District Court's decision is "cryptic" (Jurisditional Statement, p. 25), "cryptic in the extreme" (p. 12) and "devoid of any discussion" (*id.*, p. 21)—as though a court is constrained to embody its views in opinions of a length and scope satisfactory to the litigants. Not only are these criticisms unfounded, but they ignore the fact that the Court's decision was based upon a detailed Stipulation of Facts drawn up by the parties themselves and came after a full and complete hearing in which the Court went into the many aspects of the case—law and facts—with counsel. (See Transcript of Proceedings, November 15, 1968).

Appellant complains that the Court's decision is "*completely* devoid of any reasoning or guidelines" which the Appellant might use as the basis for determining how he might properly "go about protecting his interests" (Jurisdictional Statement, p. 25), when it is commonly known and understood that the Court's function is to decide cases, not to instruct the administrator of a law what course of action he should pursue to achieve the objects and purposes of the law. Actually, the District Court's

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as noted in the text above, certain statutes contain express provisions to the effect that they have no application to produce in interstate commerce.

In *none* of the cited statutes of these 16 other states was there found any requirement that produce grown in the state be packed in standard containers in a packing facility within the state, before being transported out of the state.

decision here does not preclude Appellant from utilizing any means of carrying out appropriate inspections desired by him which will not constitute an undue burden upon interstate commerce. Appellant is already carrying out inspections in the field, and various other procedures discussed during the course of the proceedings and known to Appellant are available.

Appellant complains further that the Court's decision "is not the product of skill in the law of the State of Arizona" (Jurisdictional Statement, p. 13). By what process of reasoning Appellant is able to make such an assertion is not at all clear when it is considered that the panel of three judges consists of men who literally grew up among the farms and packing houses of Arizona and California; who, as practitioners before the Bars of Arizona, California and the federal courts, acquired a close familiarity with the laws of those jurisdictions; who, as such practitioners, unquestionably had to deal with the problems of the farmers among whom they lived, and with farming practices and farming methods; and who, in their careers and capacities as judges, have undoubtedly devoted much of their time and thought to matters relating to farmers and farming. Indeed, we can conceive of no circumstance which could more effectively clothe the judicial authority with skill and expertise in this field. We respectfully submit this intimate understanding of the practical and legal aspects of the subject matter is clearly reflected in the questions and remarks of the three judges at both hearings. (See Transcript of Proceedings, June 7, 1968, and Transcript of Proceedings, November 15, 1968.)

CONCLUSION

For the reasons set forth above, it is respectfully submitted that the judgment of the three-judge District Court below finds ample support in the facts and law of the case and should be sustained.

Dated, Salinas, California,
December 22, 1969.

Respectfully submitted,
JACOB ABRAMSON,
Attorney for Appellee.

EVANS, KITCHEL & JENCKES,
ABRAMSON & CHURCH,
Of Counsel.

(Supplement Follows)

SUPPLEMENT

Comparison of Laws of Arizona and California

Arizona Fruit & Vegetable Standardization Act	California Agricultural Code
LEGISLATIVE PURPOSES	
To promote the development of the izona fruit and vegetable industry, prevent fraud and deception in the eiving, packing, marking, shipping, signment, sale, and accounting of es of fruits and vegetables for in- state and foreign commerce, there hereby established certain standards d certain standard containers for rious fruits and vegetables; and to ovide for the regular and orderly forcement of the provisions of this certain regulations for the licen- g and bonding of farm produce alers shipping fruits and vegetables fected by the standardization provi- ns of this act from the state of izona, are hereby established, and a nalty prescribed for the violation of provisions thereof. (1929 Session ws of Arizona, Chapter 95, Section page 307)	§ 3. It is hereby declared, as a matter of legislative determination, that the provisions of this code are enacted in the exercise of the power of this state for the purposes of promoting and protecting the agricultural industry of the state and for the protection of the public health, safety, and welfare.
SCOPE	
3-482. Scope of article; containers A. All fresh fruits and vegetables, hen being packed, after packing, hen delivered for shipment, loaded, ipped, being transported, offered for le or sold in this state, for which ades, standards and standard con- iners are established in this article, all come within the meaning of this rticle. B. All lots of fruits and vegetables acked for sale, offered for sale, trans- orted for sale or sold in this state all be packed in new or clean con- iners. izona Revised Statutes, Title 3, Article 4)	§ 43451. Scope of Chapter This chapter, among other things, establishes standard containers for the fruits, nuts, and vegetables for which standard packs are established by this division, when such fruits, nuts, and vegetables are being packed or placed in any container, or after packing, or when delivered for shipment, loaded, shipped, being transported, or sold in any container. (Division 17, Fruit, Nut and Vegetable Standards, Chapter 4, Containers)

Arizona Fruit & Vegetable Standardization Act

California Agricultural Co

DEFINITIONS

Deceptive Arrangement

§ 3-481.

7. "Deceptive arrangement" or "deceptive display" means a bulk load, arrangement or display of fruits or vegetables which has in the outer layer, or exposed portion, fruits or vegetables which are so superior in quality, size or condition to any of those which are concealed, or the unexposed portion, as to materially misrepresent any of the lot.

§ 42508. Deceptive arrangeme ceptive display

"Deceptive arrangement" or " tive display" of fresh or dried nuts, or vegetables means any b or load, arrangement, or disp such products which has in posed surface, fresh or dried nuts, or vegetables which are perior in quality, size, condition any other respect so superior t which are concealed, or the un portion, as to materially misre any part of the bulk lot or lo

Deceptive Pack

§ 3-481.

8. "Deceptive pack" means a container of fruits or vegetables which has in the outer layer or an exposed surface, fruits or vegetables which are so superior in quality, size or condition to those in the interior of the container, or the unexposed portion, as to materially misrepresent the entire content.

§ 42509.

"Deceptive pack" means a tainer or subcontainer which ha outer layer or any exposed fruits, nuts, or vegetables wh in quality, size, condition, or other respect so superior to t the interior of the container container or in the unexposed as to materially misrepresent t tents. Such pack is deceptive outer or exposed surface is c of products whose size is not a ate representation of the varia size of the products in the ent tainer, even though the fruits, vegetables in the container ar ally uniform in size or comply specific commodity size varia quirements of this part.

Arizona Fruit & Vegetable Standardization Act	California Agricultural Code
Pack	
481. 4. "Pack," "packing" or "packed" ans the regular compact arrange- nt of all or part of the fruit and etables in a container or subcon- ner used for the purpose of sale transportation.	§ 42516. "Pack," "packing," or "packed" means the regular compact arrangement of all or part of the fruit or vegetables in any container or subcontainer.

Arizona Fruit & Vegetable Standardization Act

California Agricultural Code

STANDARD CONTAINERS; PACK—CANTALOUPES

§ 3-503.

C . . . . All cantaloupes shall be packed in regular compact arrangement in closed standard containers approved by the supervisor. Except as follows:

1. Cantaloupes to be used for charitable purposes or unemployment relief, or by the United States government or its agencies.

2. Any retail sales directly to a consumer.

§ 45663. Method of Packing; exceptions

All cantaloupes shall be packed in regular compact arrangement in standard container number 39, 40, 41, 44, 44B, or 44D. All such containers shall be closed and, except as otherwise provided in Section 45664, the number of cantaloupes in each container shall be one of the "standard pack counts" which is listed in Section 45662 for each such container.

This section does not apply to sales of the following:

(a) Cantaloupes which are sold at a retail establishment in possession of the retailer for the purpose of resale directly to consumers.

(b) Cantaloupes which are sold by a producer regularly engaged in the production of cantaloupes directly to consumers on the premises where produced or at a retail stand operated by such producer near the point of production, which in no case shall be outside of the county in which the cantaloupes were produced.

Arizona Fruit & Vegetable Standardization Act

As used in this section "closed" idded", as applied to containers ntaloupes, means:

In the case of fiberboard con- rs that the opening is completely ed, except for necessary ventila- openings, with material of similar ty and strength to the adjoining on of the container.

In the case of nailed wooden, ound, or other containers, that percent or more of the opening vered with material similar to that in the construction of the sides bottom of such containers, se- y attached to the top.

California Agricultural Code

§ 45661. Closed

As used in this article, "closed' as applied to containers of cantaloupes means:

(a) In the case of fiberboard containers, that the opening is completely covered, except for necessary ventilation openings, with material of similar quality and strength to the adjoining portion of the container.

(b) In the case of nailed wooden, wirebound, or other containers, that 40 percent or more of the opening is covered with material similar to that used in the construction of the sides and bottom of the containers, securely attached to the top.

§ 45665. Uniformity of size and layer count

Cantaloupes which are packed shall be virtually uniform in size and there shall be approximately the same numerical count of uniformly sized cantaloupes in each layer throughout the container.

Arizona Fruit & Vegetable Standardization Act | **California Agricultural Code**

MARKINGS

§ 3-499.

A. All fruits and vegetables, when being packed or placed in a container, or after packing, or when delivered for shipment, loaded, shipped, or being transported, offered for sale or sold in bulk, or in a container or subcontainer, shall conform to this article.

B. Except as hereinafter specifically exempted, containers of fruits or vegetables, except subcontainers, shall bear in plain sight and in plain letters on the outside thereof the following:

1. Name of the orchard or farm where fruit or vegetable was produced.

2. The postoffice address of the producer, the name of the person who first packed or authorized the packing of the products or the name under which the packer is engaged in business, together with a sufficient address to permit ready location of the packer.

C. A subcontainer shall be exempt from the provisions regarding marking when the container in which they are packed is marked in compliance with the requirements of this article.

D. All markings required by this article, except net weight, shall be plainly and conspicuously stamped, stenciled, printed, labeled or branded on one end or side of each container.

E. No container or subcontainer of fruits or vegetables shall bear grade or other designations that are false or misleading. The repeated use of a container or subcontainer of fruits or vegetables bearing markings required by this article, or designations of

§ 43671. Place of markings on tainer; size of lettering; tion of display placard

If any markings are used, quired to be used by this divisi any container of any fruits, nut vegetables to describe the conte the container, such markings, wi exception of net weight, sha plainly and conspicuously m stamped, stenciled, printed, label branded on one end of each bo or carton, and either on one side top cover of each basket, barr other similar container.

The designation of grade sh stated in letters which are not les one-quarter of an inch in heig the marking is on a placard wh used in display, the placard sh placed or posted in such a positio there is no doubt as to the prod is to identify.

Arizona Fruit & Vegetable Standardization Act

California Agricultural Code

MARKINGS (Continued)

nds, quality or grade is prohibited
ess the markings which do not
perly and accurately apply to the
ducts repacked or replaced therein
first completely removed, erased or
terated.

. Nothing in this article shall be
strued to conflict with any state
federal law or regulation regarding
weight markings on containers or
containers.

503. . . .

C. All containers of cantaloupes
ll have appearing thereon, in plain
nt and in plain letters on one out-
e end, the name of the person who
packed or authorized the packing
the cantaloupes, or the name under
ich such packer is engaged in busi-
s, together with a sufficiently ex-
cit address to permit ready location
such packer. All cantaloupes shall
packed in regular compact arrange-
nt in closed standard containers ap-
oved by the supervisor. Except as
llows:

1. Cantaloupes to be used for
aritable purposes or unemployment
lief, or by the United States govern-
nt or its agencies.

2. Any retail sales directly to a
nsumer.

-503. . . .

E. In addition to the markings re-
ired by subsections B, C and D,
ction 3-499, each container of canta-
upes shall be conspicuously marked
letters not less than one-half of
e inch in height, stating the exact
mber of melons packed therein.

§ 45691. Packer's name and address

Every container of cantaloupes shall bear upon it in plain sight and in plain letters on one outside end, the name of the person that first packed or authorized the packing of the cantaloupes, or the name under which such packer is engaged in business, together with a sufficiently explicit address to permit ready location of such packer.

§ 45664. Smaller number in container; marking exact count

Notwithstanding the provisions of Sections 45633 and 45663, a smaller number of larger uniformly sized cantaloupes may be packed in standard container number 41 or 42 if the container is marked with the exact count of cantaloupes which it contains. Cantaloupes of the size 18 or larger also may be packed in containers numbers 44H, 44I, 44J, and 44K if the containers are marked with the exact number of cantaloupes contained therein.

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Arizona Fruit & Vegetable Standardization Act

California Agricultural Co

QUALITY STANDARDS

§ 3-503. CANTALOUPES; Definitions; Serious Damage; Standard Packs; Crate Markings; Irregular Sized Container; Exceptions

A. Cantaloupes, shall be mature but not overripe, fairly well netted, and free from mold, decay and insect damage which has penetrated or damaged the edible portion of the cantaloupe, and free from serious damage due to bruises, sunburn, growth cracks, cuts, sponginess, flabbiness, wilting, or other causes. Damage to any one cantaloupe is not serious unless it affects the edible portion or shipping quality of the individual cantaloupe or seriously detracts from the appearance thereof. Not more than ten percent, by count, of the cantaloupes in any one container may be below the foregoing requirements, but not to exceed one-half of this tolerance shall be allowed for any one cause. Cantaloupes packed in the standard containers shall be fairly uniform in size. All cantaloupes in each container shall be of one variety or of similar varietal characteristics.

B. "Mature", in the case of cantaloupes, means that the appearance of the outside indicates maturity and the arils which surround the seed during the development of maturity have been absorbed and, in addition, that the juice of the edible portion shall contain not less than eight percent soluble

§ 45601. Maturity and freedo defects

Cantaloupes shall be mature b overripe, not poorly netted an from any of the following defe

(a) Mold, decay, and insect which has penetrated or damag edible portion of the cantaloupe.

(b) Serious damage which to bruises, sunburn, growth cuts, sponginess, flabbiness, wilti other causes. Damage to any one loupe is not serious unless it the edible portion of the indi cantaloupe.

§ 45602. Mature

"Mature" in the case of a cant means that the cantaloupe co with all of the following require

(a) The appearance of the indicates maturity.

(b) The arils which surrou seed during development of m have been absorbed.

(c) The juice of the edible p contains not less than 8 percent solids as determined by the st hand refractometer.

§ 45603. Soluble solids of edib tion

The soluble solids content edible portion of cantaloupes s determined by extracting the from two plugs of the flesh, on each of opposite sides of the

Arizona Fruit & Vegetable Standardization Act

is as determined by the standard
d refractometer.

. .

California Agricultural Code

and taken at approximately one-half of the distance between the stem and blossom ends. The plugs shall be approximately one-half of an inch in diameter. The portion of the plug three-eighths of an inch from the outside edge of the rind shall not be included as the edible portion of the plug of flesh.

§ 45604. Tolerances

Not more than 10 percent, by count, of the cantaloupes in any one container or bulk lot may be below the requirements which are prescribed by this article, but not to exceed one-half of this tolerance shall be allowed for any one cause.

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Arizona Fruit & Vegetable Standardization Act

California Agricultural Code

EXEMPTIONS

§ 3-518.

This article shall not be construed to prevent a grower of fruits or vegetables in the state from selling or delivering his products unpacked and unmarked as a part of his crop in bulk to a packer in this state for grading, packing or storage, or to prevent a grower or packer from manufacturing the products into a by-product, or from selling the products unpacked or unmarked to a person engaged in the operation of a commercial by-products factory for the sole and express purpose of being used in the state in the manufacture of a by-product for resale.

§ 43251. Transportation for processing or disposal

Except as otherwise provided in tion 44008, fruits, nuts, and vege of the kinds which are specified in division, if they are not wrapped packed, are exempt from the stand which are established in this div when being transported or deliv to the destinations and for the poses herein set forth, or when pared, loaded, shipped, or sold u any of the following conditions:

(a) From a packing plant w does not have proper or adequate cilities for processing, grading, p ing, or reconditioning, to another p ing plant within the state which such facilities.

(b) To a byproduct plant wi the state for commercial proces preserving, or manufacture of products for resale. Dates, how

are not exempt from the standards which are established by Chapter 20 (commencing with Section 47401) of this division, except while they are being transported or delivered to a distillery for the manufacture of brandy or alcohol or to any person for the production of any product which is not for human consumption.

(c) To a feed yard within the state for livestock feeding purposes.

(d) To a dumping ground or waste disposal plant within the state for disposal.

(e) From the orchard or field where they were produced to a packing plant within the state for first processing, grading, or packing.

Arizona Fruit & Vegetable Standardization Act | **California Agricultural Code**

ENFORCEMENT

Inspection Powers

§ 3-486. Supervisor; inspection powers

A. The supervisor may enter and inspect every place or vehicle within the state where fruits and vegetables are produced, received, packed, delivered, loaded, shipped, offered for sale or sold for interstate shipment, and inspect fruits, vegetables and containers found therein.

XII.

§ 42821. Authority to enter, in and take samples

An enforcing officer may enter inspect any place or conveyance w the county or district over whic has jurisdiction, where any fres dried fruits, nuts or vegetables produced, stored, packed, delivered shipment, loaded, shipped, being t ported, or sold.

He may inspect all fresh or fruits, nuts, and vegetables and containers and equipment found i such place or conveyance. He may take for inspection, such represent samples of the produce and such tainers, as may be necessary to mine whether or not this divisio been violated and may subject samples of produce to any meth inspection or testing.

Seizure of Evidence

§ 3-486.

B. He shall have the same powers in the performance of his duties as other peace officers, and may, while exercising such police powers, seize or hold as evidence the part of a pack, load, lot, consignment or shipment of fruits or vegetables packed, delivered for shipment, loaded, shipped, being transported, offered for sale or sold in violation of this article, as in his judgment may be necessary to secure the conviction of the party he knows or has good reason to believe is violating any provision of this article.

§ 42823.

Any enforcing officer may, whi forcing this division, seize and as evidence all or any part o pack, load, bulk lot, consignme shipment of fresh or dried fruits, or vegetables which is packed, del for shipment, loaded, shipped, or transported, or sold in violation division, or any container of product, as may in his judgme necessary to secure the convicti the party he knows or believe violated or is violating any pr of this devision.

Arizona Fruit & Vegetable Standardization Act

California Agricultural Code

Violations

3-522.

A. It is unlawful for any person to ct as commission merchant, broker or gent without a valid license, or for ny commission merchant or agent to:

1. Impose false charges for han-ling or performing any service in con-ection with the handling of farm roducts.

2. Intentionally make false or mis-eading statements as to market con-itions.

3. Make fictitious sales or conspire o defraud the producer.

4. Change the lot number of a con-ignment or the serial number of the ar used in the transportation thereof ith intent to defraud.

5. Directly or indirectly purchase or his own account goods received pon consignment without prior au-hority from the consignor, or fail romptly to notify the consignor of the urchase of his own account.

6. Intentionally make a false state-ent as to the grade, condition, mark-gs, quality or quantity of products, owever shipped or packed.

B. It is also unlawful:

1. To pack, cause to be packed, sell, ffer for sale, deliver for shipment, oad, ship or transport for shipment ny fruits or vegetables which do not onform to the requirements of this rticle.

2. To prepare, deliver for shipment, oad, ship, transport, offer for sale or ell for shipment, a deceptive pack, oad, arrangement or display of fruits r vegetables, or to mislabel any con-ainer or display of the fruits or vege-ables.

C. A person violating a provision f this section, or a provision of this rticle other than provided in this is guilty of a misdemeanor.

§ 42941. Nonconforming products

It is unlawful for any person to prepare, pack, place, deliver for shipment, deliver for sale, load, ship, transport, cause to be transported, or sell any fruits, nuts, or vegetables in bulk, or in any container or subcontainer, unless such fruits, nuts, and vegetables, and their containers, conform to the provisions of this division.

§ 42942. Deceptive pack or lot

It is unlawful for any person to prepare, pack, place, deliver for shipment, load, ship, transport, or sell a deceptive pack, bulk lot, bulk load, load, arrangement, or display of fresh or dried fruits, nuts, or vegetables.

XIII.

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